SENATE—*Friday, March 11, 1994*

(Legislative day of Tuesday, February 22, 1994)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable CAROL MOSELEY-BRAUN, a Senator from the State of Illinois.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.—Genesis 2:24.

Father God, this morning we pray for our families who are so often hostage to Senate schedules. We thank You for our spouses and our children. We thank You for the explicit instruction given to our original parents, Adam and Eve, and we ask for Your wisdom and strength in conforming.

Gracious God, as we anticipate this weekend, help us to take time—make time—for our families. Help us to demonstrate, in some way, an awareness that the family has first priority, remembering that at the root of cultural and social decay is the dysfunctional family. Bless our families and our time with them this weekend.

We pray in His name who said, "Suffer the little children to come unto me, and forbid them not: for of such is the kingdom of God."—Mark 10:14.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 11, 1994.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CAROL MOSELEY-BRAUN, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. MOSELEY-BRAUN thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

FEDERAL WORKFORCE RESTRUCTURING ACT OF 1994

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair will now lay before the Senate a House message accompanying H.R. 3345, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3345) to amend title 5, United States Code, to eliminate certain restrictions on employee training; to provide temporary authority to Government agencies relating to voluntary separation incentive payments, and for other purposes.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 3345) entitled "An act to provide temporary authority to Government agencies relating to voluntary separation incentive payments, and for other purposes", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Workforce Restructuring Act of 1994".

SEC. 2. TRAINING.

(a) IN GENERAL.—Chapter 41 of title 5, United States Code, is amended—

(1) in section 4101(4) by striking "fields" and all that follows through the semicolon and inserting "fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals;";

(2) in section 4103—

(A) in subsection (a)—

(i) by striking "In" and all that follows through "maintain" and inserting "In order to assist in achieving an agency's mission and performance goals by improving employee and organizational performance, the head of each agency, in conformity with this chapter, shall establish, operate, maintain, and evaluate";

(ii) by striking "and" at the end of paragraph (2);

(iii) by redesignating paragraph (3) as paragraph (4); and

(iv) by inserting after paragraph (2) the following:

"(3) provide that information concerning the selection and assignment of employees for training and the applicable training limitations and restrictions be made available to employees of the agency; and"; and

(B) in subsection (b)—

(i) in paragraph (1) by striking "determines" and all that follows through the period and inserting "determines that such training would be in the interests of the Government.";

(ii) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(iii) in subparagraph (C) of paragraph (2) (as so redesignated) by striking "retaining" and all that follows through the period and inserting "such training.";

(3) in section 4105—

(A) in subsection (a) by striking "(a)"; and

(B) by striking subsections (b) and (c);

(4) by repealing section 4106;

(5) in section 4107—

(A) by amending the catchline to read as follows:

"§4107. Restriction on degree training";

(B) by striking subsections (a) and (b) and redesignating subsections (c) and (d) as subsections (a) and (b), respectively;

(C) by amending subsection (a) (as so redesignated)—

(i) by striking "subsection (d)" and inserting "subsection (b)"; and

(ii) by striking "by, in, or through a non-Government facility"; and

(D) by amending paragraph (1) of subsection (b) (as so redesignated) by striking "subsection (c)" and inserting "subsection (a)";

(6) in section 4108(a) by striking "by, in, or through a non-Government facility under this chapter" and inserting "for more than a minimum period prescribed by the head of the agency";

(7) in section 4113(b)—

(A) in the first sentence by striking "annually to the Office," and inserting "to the Office, at least once every 3 years, and"; and

(B) by striking the matter following the first sentence and inserting the following: "The report shall set forth—

"(1) information needed to determine that training is being provided in a manner which is in compliance with applicable laws intended to protect or promote equal employment opportunity; and

"(2) information concerning the expenditures of the agency in connection with training and such other information as the Office considers appropriate.";

(8) by repealing section 4114; and

(9) in section 4118—

(A) in subsection (a)(7) by striking "by, in, and through non-Government facilities";

(B) by striking subsection (b); and

(C) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Title 5, United States Code, is amended—

(1) in section 3381(e) by striking "4105(a)," and inserting "4105,"; and

(2) in the analysis for chapter 41—

(A) by repealing the items relating to sections 4106 and 4114; and

(B) by amending the item relating to section 4107 to read as follows:

"4107. Restriction on degree training.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of enactment of this Act.

SEC. 3. VOLUNTARY SEPARATION INCENTIVES.

(a) DEFINITIONS.—For the purpose of this section—

(1) the term "agency" means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the Department of Defense, the Central Intelligence Agency, or the General Accounting Office; and

(2) the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who is employed by an agency, is

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 12 months; such term includes an individual employed by a county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), but does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in subparagraph (A).

(b) AUTHORITY.—

(1) IN GENERAL.—In order to avoid or minimize the need for involuntary separations due to a reduction in force, reorganization, transfer of function, or other similar action, and subject to paragraph (2), the head of an agency may pay, or authorize the payment of, voluntary separation incentive payments to agency employees—

(A) in any component of the agency;

(B) in any occupation;

(C) in any geographic location; or

(D) on the basis of any combination of factors under subparagraphs (A) through (C).

(2) CONDITION.—

(A) IN GENERAL.—In order to receive an incentive payment, an employee must separate from service with the agency (whether by retirement or resignation) before April 1, 1995.

(B) EXCEPTION.—An employee who does not separate from service before the date specified in subparagraph (A) shall be ineligible for an incentive payment under this section unless—

(i) the agency head determines that, in order to ensure the performance of the agency's mission, it is necessary to delay such employee's separation; and

(ii) the employee separates after completing any additional period of service required (but not later than March 31, 1997).

(c) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(1) shall be paid in a lump sum after the employee's separation;

(2) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code, if the employee were entitled to payment under such section; or

(B) $25,000;

(3) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(4) shall not be taken into account in determining the amount of any severance pay to which an employee may be entitled under section 5595 of title 5, United States Code, based on any other separation; and

(5) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—

(1) IN GENERAL.—An employee who has received a voluntary separation incentive payment under this section and accepts employment with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to repay the entire amount of the incentive payment to the agency that paid the incentive payment.

(2) WAIVER AUTHORITY.—

(A) EXECUTIVE AGENCY.—If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(B) LEGISLATIVE BRANCH.—If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(C) JUDICIAL BRANCH.—If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) DEFINITION.—For purposes of paragraph (1) (but not paragraph (2)), the term "employment" includes employment under a personal services contract with the United States.

(e) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary for the administration of subsections (a) through (d).

(f) EMPLOYEES OF THE JUDICIAL BRANCH.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program consistent with the program established by subsections (a) through (d) for individuals serving in the judicial branch.

SEC. 4. ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.

(a) RELATING TO FISCAL YEARS 1994 AND 1995.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, an agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 9 percent of the final basic pay of each employee of the agency—

(A) who, on or after the date of the enactment of this Act and before October 1, 1995, retires under section 8336(d)(2) of such title; and

(B) to whom a voluntary separation incentive payment has been or is to be paid by such agency based on that retirement.

(2) DEFINITIONS.—For the purpose of this subsection—

(A) the term "final basic pay", with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor; and

(B) the term "voluntary separation incentive payment" means—

(i) a voluntary separation incentive payment under section 3 (including under any program established under section 3(f)); and

(ii) any separation pay under section 5597 of title 5, United States Code, or section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103–36; 107 Stat. 104).

(b) RELATING TO FISCAL YEARS 1995 THROUGH 1998.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, in fiscal years 1995, 1996, 1997, and 1998 (and in addition to any amounts required under subsection (a)), each agency shall, before the end of each such fiscal year, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to the product of—

(A) the number of employees of such agency who, as of March 31st of such fiscal year, are subject to subchapter III of chapter 83 or chapter 84 of such title; multiplied by

(B) $80.

(2) DEFINITION.—For the purpose of this subsection, the term "agency" means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office.

(c) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary to carry out this section.

SEC. 5. REDUCTION OF FEDERAL FULL-TIME EQUIVALENT POSITIONS.

(a) DEFINITION.—For the purpose of this section, the term "agency" means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office.

(b) LIMITATIONS ON FULL-TIME EQUIVALENT POSITIONS.—The President, through the Office of Management and Budget (in consultation with the Office of Personnel Management), shall ensure that the total number of full-time equivalent positions in all agencies shall not exceed—

(1) 2,084,600 during fiscal year 1994;

(2) 2,043,300 during fiscal year 1995;

(3) 2,003,300 during fiscal year 1996;

(4) 1,963,300 during fiscal year 1997;

(5) 1,922,300 during fiscal year 1998; and

(6) 1,882,300 during fiscal year 1999.

(c) MONITORING AND NOTIFICATION.—The Office of Management and Budget, after consultation with the Office of Personnel Management, shall—

(1) continuously monitor all agencies and make a determination on the first date of each quarter of each applicable fiscal year of whether the requirements under subsection (b) are met; and

(2) notify the President and the Congress on the first date of each quarter of each applicable fiscal year of any determination that any requirement of subsection (b) is not met.

(d) COMPLIANCE.—If, at any time during a fiscal year, the Office of Management and Budget notifies the President and the Congress that any requirement under subsection (b) is not met, no agency may hire any employee for any position in such agency until the Office of Management and Budget notifies the President and the Congress that the total number of full-time equivalent positions for all agencies equals or is less than the applicable number required under subsection (b).

(e) WAIVER.—

(1) EMERGENCIES.—Any provision of this section may be waived upon a determination by the President that—

(A) the existence of a state of war or other national security concern so requires; or

(B) the existence of an extraordinary emergency threatening life, health, safety, property, or the environment so requires.

(2) AGENCY EFFICIENCY OR CRITICAL MISSION.—

(A) Subsection (d) may be waived, in the case of a particular position or category of positions in an agency, upon a determination of the President that the efficiency of the agency or the performance of a critical agency mission so requires.

(B) Whenever the President grants a waiver pursuant to subparagraph (A), the President shall take all necessary actions to ensure that the overall limitations set forth in subsection (b) are not exceeded.

(f) EMPLOYMENT BACKFILL PREVENTION.—

(1) IN GENERAL.—The total number of funded employee positions in all agencies (excluding the Department of Defense and the Central Intelligence Agency) shall be reduced by one position for each vacancy created by the separation of any employee who has received, or is due to receive, a voluntary separation incentive payment under section 3 (a)–(e). For purposes of this subsection, positions and vacancies shall be counted on a full-time-equivalent basis.

(2) RELATED RESTRICTION.—No funds budgeted for and appropriated by any Act for salaries or expenses of positions eliminated under this subsection may be used for any purpose other than authorized separation costs.

(g) LIMITATION ON PROCUREMENT OF SERVICE CONTRACTS.—The President shall take appropriate action to ensure that there is no increase in the procurement of service contracts by reason of the enactment of this Act, except in cases in which a cost comparison demonstrates such contracts would be to the financial advantage of the Federal Government.

SEC. 6. SUBSEQUENT EMPLOYMENT AND REPAYMENT OF SEPARATION PAYMENT.

(a) DEFENSE AGENCY SEPARATION PAY.—Section 5597 of title 5, United States Code, is amended by adding at the end the following:

"(g)(1) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 and accepts employment with the Government of the United States within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the defense agency that paid the separation pay.

"(2) If the employment is with an Executive agency, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

"(3) If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

"(4) If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.".

(b) CENTRAL INTELLIGENCE AGENCY SEPARATION PAYMENT.—Section 2(b) of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103–36; 107 Stat. 104) is amended by adding at the end the following: "An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 and accepts employment with the Government of the United States within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the Central Intelligence Agency. If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.".

SEC. 7. STANDARDIZATION OF WITHDRAWAL OPTIONS FOR THRIFT SAVINGS PLAN PARTICIPANTS.

(a) PARTICIPATION IN THE THRIFT SAVINGS PLAN.—Section 8351(b) of title 5, United States Code, is amended—

(1) by amending paragraph (4) to read as follows:

"(4) Section 8433(b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment.";

(2) by striking paragraphs (5), (6), and (8);

(3) by redesignating paragraphs (7), (9), and (10) as paragraphs (5), (6), and (7), respectively;

(4) in paragraph (5)(C) (as so redesignated by paragraph (3) of this subsection) by striking "or former spouse" each place it appears;

(5) by amending paragraph (6) (as so redesignated by paragraph (3) of this subsection) to read as follows:

"(6) Notwithstanding paragraph (4), if an employee or Member separates from Government employment and such employee's or Member's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b).";

and

(6) in paragraph (7) (as so redesignated by paragraph (3) of this subsection) by striking "nonforfeiture" and inserting "nonforfeitable".

(b) BENEFITS AND ELECTION OF BENEFITS.—Section 8433 of title 5, United States Code, is amended—

(1) in subsection (b) by striking the matter before paragraph (1) and inserting the following:

"(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect—";

(2) by striking subsections (c) and (d) and redesignating subsections (e) through (i) as subsections (c) through (g), respectively;

(3) in subsection (c)(1) (as so redesignated by paragraph (2) of this subsection) by striking "or (c)(4) or required under subsection (d) directly to an eligible retirement plan or plans (as defined in section 402(a)(5)(E) of the Internal Revenue Code of 1954)" and inserting "directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986)";

(4) in subsection (d)(2) (as so redesignated by paragraph (2) of this subsection) by striking "or (c)(2)"; and

(5) in subsection (f) (as so redesignated by paragraph (2) of this subsection)—

(A) by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(B) in paragraph (1) (as so redesignated by subparagraph (A) of this paragraph)—

(i) by striking "Notwithstanding subsections (b) and (c), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under either of those subsections, and such employee's or Member's" and inserting "Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee's or Member's"; and

(ii) by striking "or (c), as applicable"; and

(C) in paragraph (2) (as so redesignated by subparagraph (A) of this paragraph) by striking "paragraphs (1) and (2)" and inserting "paragraph (1)".

(c) ANNUITIES: METHODS OF PAYMENT; ELECTION; PURCHASE.—Section 8434(c) of title 5, United States Code, is amended to read as follows:

"(c) Notwithstanding the elimination of a method of payment by the Board, an employee, Member, former employee, or former Member may elect the eliminated method if the elimination of such method becomes effective less than 5 years before the date on which that individual's annuity commences.".

(d) PROTECTIONS FOR SPOUSES AND FORMER SPOUSES.—Section 8435 of title 5, United States Code, is amended—

(1) in subsection (a)(1)(A) by striking "subsection (b)(3), (b)(4), (c)(3), or (c)(4) of section 8433 of this title or change an election previously made under subsection (b)(1), (b)(2), (c)(1), or (c)(2)" and inserting "subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2)";

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively;

(4) in subsection (b) (as so redesignated by paragraph (3) of this subsection) by amending paragraph (2) to read as follows:

"(2) Paragraph (1) shall not apply if—

"(A) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

"(B) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described under subsection (a)(2) (A) or (B) make the requirement of a joint waiver inappropriate."; and

(5) in subsection (c)(1) (as so redesignated by paragraph (3) of this subsection) by striking "and a transfer may not be made under section 8433(d) of this title".

(e) JUSTICES AND JUDGES.—Section 8440a(b) of title 5, United States Code, is amended—

(1) in paragraph (5) by striking "Section 8433(d)" and inserting "Section 8433(b)"; and

(2) by striking paragraphs (7) and (8) and inserting the following:

"(7) Notwithstanding paragraphs (4) and (5), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, or resigns without having met the age and service requirements set forth under section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b).".

(f) BANKRUPTCY JUDGES AND MAGISTRATES.—Section 8440b of title 5, United States Code, is amended—

(1) in subsection (b)(4) by amending subparagraph (B) to read as follows:

"(B) Section 8433(b) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors Annuities for Bankruptcy Judges and Magistrates Act of 1988.";

(2) in subsection (b)(4)(C) by striking "Section 8433(d)" and inserting "Section 8433(b)";

(3) in subsection (b)(5) by striking "retirement under section 377 of title 28 is" and inserting "any of the actions described under paragraph (4) (A), (B), or (C) shall be considered";

(4) in subsection (b) by striking paragraph (8) and redesignating paragraph (9) as paragraph (8); and

(5) in paragraph (8) of subsection (b) (as so redesignated by paragraph (4) of this subsection)—

(A) by striking "Notwithstanding subparagraphs (A) and (B) of paragraph (4), if any

bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b) or (c)" and inserting "Notwithstanding paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b)"; and

(B) by striking "and (c), as applicable".

(g) CLAIMS COURT JUDGES.—Section 8440c of title 5, United States Code, is amended—

(1) in subsection (b)(4)(B) by striking "Section 8433(d)" and inserting "Section 8433(b)";

(2) in subsection (b)(5) by striking "retirement under section 178 of title 28 is" and inserting "any of the actions described in paragraph (4)(A) or (B) shall be considered";

(3) in subsection (b) by striking paragraph (8) and redesignating paragraph (9) as paragraph (8); and

(4) in paragraph (8) (as so redesignated by paragraph (3) of this subsection) by striking "Notwithstanding paragraph (4)(A)" and inserting "Notwithstanding paragraph (4)".

(h) JUDGES OF THE UNITED STATES COURT OF VETERANS APPEALS.—Section 8440d(b)(5) of title 5, United States Code, is amended by striking "A transfer shall be made as provided in section 8433(d) of this title" and inserting "Section 8433(b) of this title applies".

(i) TECHNICAL AND CONFORMING AMENDMENTS.—Title 5, United States Code, is amended—

(1) in section 8351(b)(5)(B) (as so redesignated by subsection (a)(3) of this section) by striking "section 8433(i)" and inserting "section 8433(g)";

(2) in section 8351(b)(5)(D) (as so redesignated by subsection (a)(3) of this section) by striking "section 8433(i)" and inserting "section 8433(g)";

(3) in section 8433(b)(4) by striking "subsection (e)" and inserting "subsection (c)";

(4) in section 8433(d)(1) (as so redesignated by subsection (b)(2) of this section) by striking "(d) of section 8435" and inserting "(c) of section 8435";

(5) in section 8433(d)(2) (as so redesignated by subsection (b)(2) of this section) by striking "section 8435(d)" and inserting "section 8435(c)";

(6) in section 8433(e) (as so redesignated by subsection (b)(2) of this section) by striking "section 8435(d)(2)" and inserting "section 8435(c)(2)";

(7) in section 8433(g)(5) (as so redesignated by subsection (b)(2) of this section) by striking "section 8435(f)" and inserting "section 8435(e)";

(8) in section 8434(b) by striking "section 8435(c)" and inserting "section 8435(b)";

(9) in section 8435(a)(1)(B) by striking "subsection (c)" and inserting "subsection (b)";

(10) in section 8435(d)(1)(B) (as so redesignated by subsection (d)(3) of this section) by striking "subsection (d)(2)" and inserting "subsection (c)(2)";

(11) in section 8435(d)(3)(A) (as so redesignated by subsection (d)(3) of this section) by striking "subsection (c)(1)" and inserting "subsection (b)(1)";

(12) in section 8435(d)(6) (as so redesignated by subsection (d)(3) of this section) by striking "or (c)(2)" and inserting "or (b)(2)";

(13) in section 8435(e)(1)(A) (as so redesignated by subsection (d)(3) of this section) by striking "section 8433(i)" and inserting "section 8433(g)";

(14) in section 8435(e)(2) (as so redesignated by subsection (d)(3) of this section) by striking "section 8433(i) of this title shall not be approved if approval would have the result described in subsection (d)(1)" and inserting "section 8433(g) of this title shall not be approved if approval would have the result described under subsection (c)(1)";

(15) in section 8435(g) (as so redesignated by subsection (d)(3) of this section) by striking "section 8433(i)" and inserting "section 8433(g)";

(16) in section 8437(c)(5) by striking "section 8433(i)" and inserting "section 8433(g)"; and

(17) in section 8440a(b)(6) by striking "section 8351(b)(7)" and inserting "section 8351(b)(5)".

(j) EFFECTIVE DATE.—This section shall take effect 1 year after the date of the enactment of this Act or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation.

SEC. 8. AMENDMENTS TO ALASKA RAILROAD TRANSFER ACT OF 1982 REGARDING FORMER FEDERAL EMPLOYEES.

(a) APPLICABILITY OF VOLUNTARY SEPARATION INCENTIVES TO CERTAIN FORMER FEDERAL EMPLOYEES.—Section 607(a) of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1206(a)) is amended by adding at the end the following:

"(4)(A) The State-owned railroad shall be included in the definition of 'agency' for purposes of section 3 (a), (b), (c), and (e) of the Federal Workforce Restructuring Act of 1994 and may elect to participate in the voluntary separation incentive program established under such Act. Any employee of the State-owned railroad who meets the qualifications as described under the first sentence of paragraph (1) shall be deemed an employee under such Act.

"(B) An employee who has received a voluntary separation incentive payment under this paragraph and accepts employment with the State-owned railroad within 5 years after the date of separation on which payment of the incentive is based shall be required to repay the entire amount of the incentive payment unless the head of the State-owned railroad determines that the individual involved possesses unique abilities and is the only qualified applicant available for the position.".

(b) LIFE AND HEALTH INSURANCE BENEFITS.—Section 607 of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1206) is amended by striking subsection (e) and inserting the following:

"(e)(1) Any person described under the provisions of paragraph (2) may elect life insurance coverage under chapter 87 of title 5, United States Code, and enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with the provisions of this subsection.

"(2) The provisions of paragraph (1) shall apply to any person who—

"(A) on the date of the enactment of the Federal Workforce Restructuring Act of 1994, is an employee of the State-owned railroad;

"(B) has 20 years or more of service (in the civil service as a Federal employee or as an employee of the State-owned railroad, combined) on the date of retirement from the State-owned railroad; and

"(C)(i) was covered under a life insurance policy pursuant to chapter 87 of title 5, United States Code, on January 4, 1985, for the purpose of electing life insurance coverage under the provisions of paragraph (1); or

"(ii) was enrolled in a health benefits plan pursuant to chapter 89 of title 5, United States Code, on January 4, 1985, for the purpose of enrolling in a health benefits plan under the provisions of paragraph (1).

"(3) For purposes of this section, any person described under the provisions of paragraph (2) shall be deemed to have been covered under a life insurance policy under chapter 87 of title 5, United States Code, and to have been enrolled in a health benefits plan under chapter 89 of title 5, United States Code, during the period beginning on January 5, 1985, through the date of retirement of any such person.

"(4) The provisions of paragraph (1) shall not apply to any person described under paragraph (2) until the date such person retires from the State-owned railroad.".

Mr. GRAMM addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized to offer an amendment.

AMENDMENT NO. 1495

(Purpose: To establish a Violent Crime Reduction Trust Fund)

Mr. GRAMM. Madam President, I have an amendment at the desk, and I call that amendment up.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] proposes an amendment numbered 1495.

Mr. GRAMM. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

H.R. 3345

SEC. . CREATION OF VIOLENT CRIME REDUCTION TRUST FUND.

VIOLENT CRIME REDUCTION TRUST FUND

"(a) There is established a separate account in the Treasury, known as the 'Violent Crime Reduction Trust Fund', into which shall be deposited deficit reduction (as defined in subsection (b) of this section) achieved by the preceeding section.

"(b) On the first day of the following fiscal years (or as soon thereafter as possible for fiscal year 1994), the following amounts shall be transferred from the general fund to the Violent Crime Reduction Trust Fund—

"(1) for fiscal year 1994, $720,000,000;

"(2) for fiscal year 1995, $2,423,000,000;

"(3) for fiscal year 1996, $4,267,000,000;

"(4) for fiscal year 1997, $6,313,000,000; and

"(5) for fiscal year 1998, $8,545,000,000.

"(c) Notwithstanding any other provision of law—

"(1) the amounts in the Violent Crime Reduction Trust Fund may be appropriated exclusively for the purposes authorized in the Violent Crime Control and Law Enforcement Act of 1993;

"(2) the amounts in the Violent Crime Reduction Trust Fund and appropriations under paragraph (1) of this section shall be excluded from, and shall not be taken into account for purposes of, any budget enforcement procedures under the Congressional Budget Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985; and

"(3) for purposes of this subsection, 'appropriations under paragraph (1)' mean amounts of budget authority not to exceed the balances of the Violent Crime Reduction Trust Fund and amounts of outlays that flow from budget authority actually appropriated.".

(b) LISTING OF THE VIOLENT CRIME REDUCTION TRUST FUND AMONG GOVERNMENT TRUST FUNDS.—Section 1321(a) of title 31, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(91) Violent Crime Reduction Trust Fund.".

(c) REQUIREMENT FOR THE PRESIDENT TO REPORT ANNUALLY ON THE STATUS OF THE ACCOUNT.—Section 1105(a) of title 31, United States Code, is amended by adding at the end thereof:

"(29) information about the Violent Crime Reduction Trust Fund, including a separate statement of amounts in that Trust Fund.

"(30) an analysis displaying by agency proposed reductions in full-time equivalent positions compared to the current year's level in order to comply with section 1352 of the Violent Crime Control and Law Enforcement Act of 1993.".

SEC. . CONFORMING REDUCTION IN DISCRETIONARY SPENDING LIMITS.

The Director of the Office of Management and Budget shall, upon enactment of this Act, reduce the discretionary spending limits set forth in section 601(a)(2) of the Congressional Budget Act of 1974 for fiscal years 1994 through 1998 as follows:

(1) for fiscal year 1994, for the discretionary category: $720,000,000 in new budget authority and $314,000,000 in outlays;

(2) for fiscal year 1995, for the discretionary category: $2,423,000,000 in new budget authority and $2,330,000,000 in outlays;

(3) for fiscal year 1996, for the discretionary category: $4,267,000,000 in new budget authority and $4,184,000,000 in outlays;

(4) for fiscal year 1997, for the discretionary category: $6,313,000,000 in new budget authority and $6,221,000,000 in outlays; and

(5) for fiscal year 1998, for the discretionary category: $8,545,000,000 in new budget authority and $8,443,000,000 in outlays.

Mr. GRAMM. Madam President, I want to go back and recount where we have been on the issue that is the subject matter of the amendment which is before us.

I have offered an amendment, which consists of the text of the Byrd amendment which I cosponsored, on the crime bill, which has the objective of, after locking in a reduction in the Federal work force of 252,000 personnel slots, achieving a savings in the first 5 years of $20.8 billion, lowering the spending caps in the Federal budget to assure that none of that money is spent for other purposes, and then dedicating the $20.8 billion to a violent crime reduction trust fund to pay for a dual approach to try to rid America of violent crime.

One approach is putting 100,000 police officers on the street. The other approach is building prisons, adopting mandatory minimum sentencing, and asking States to enter into a partnership with the Federal Government to incarcerate repeat violent offenders in regional prisons which are to be constructed with the money contained in this amendment.

In order to participate, the States have to adopt certain policies, including a truth-in-sentencing provision which establishes a high ratio between the amount of time someone is sentenced to prison and the amount of time they actually spend in prison.

That, Madam President, is the subject matter of the amendment before us.

Let me relate the Senate's history on this issue because it is somewhat of a long history, and I think it will be helpful to understand why this amendment is so important to me. I hope it will be important to the Senate, and I hope it will become the law of the land.

On October 28 of last year, I offered the original amendment which set out in law the President's stated goal from the reinventing Government proposal to reduce the number of personnel slots in the Federal bureaucracy by 252,000, and to set out an enforcement mechanism whereby the Office of Management and Budget would make a finding concerning the level of actual full-time equivalent employment in the Federal Government.

If the OMB Director were to find that the level of full-time equivalent employment exceeds the level set out in law, then that would automatically trigger a hiring freeze that would stay in effect until the employment target is achieved and the attendant savings are realized.

The first Gramm amendment would have applied the entire $20.8 billion to deficit reduction. I remind my colleagues that when I offered that amendment on October 28, it was adopted on a very strong bipartisan vote, 82 to 14.

In November last year, when we were considering the anticrime bill, Senator BYRD, responding to a discussion of how we were going to come together on a crime bill where basically, Madam President, there were two approaches—the approach of Republicans was to build prisons, to impose mandatory minimum sentences, and to grab violent criminals by the throat to assure that every morning we do not have to wake up and open up the newspaper and find that a violent predator criminal who had previously brutalized or killed people is back out on the street and doing it again. We had an approach on the Democratic side to put more police officers on the street and institute a series of other reforms that were aimed at trying to deal with first-time offenders, trying to deal with some of the root causes of crime.

Senator BYRD and I lamented the fact that we had difficulty in funding both approaches. Senator BYRD came up with the idea of taking the text of my original amendment on Federal work force levels and using the savings from that amendment to fund the crime bill.

The Byrd amendment, which I cosponsored with many others, was adopted on November 4 of last year.

Then, at the end of the session, the original bill, to which I had attached the first Gramm amendment that set employment caps and saved $20.8 billion, came back over from the House without the Gramm amendment—despite the fact that Members of the House on two separate occasions had instructed conferees to accept that amendment and to save $20.8 billion. A conference occurred, it lasted for 5 minutes and the amendment was dropped.

The House then rejected that proposal and sent it back into conference. The amendment was dropped again. So despite the fact that the Senate voted 82 to 14 for my amendment, despite the fact that the House voted for it twice, it ended up being dropped from the House bill. Then last year, on the last day of the session, in one last attempt to see that we did not leave $20 billion on the table, a table which is often ransacked by people who want to spend money, I offered the amendment again. But my colleagues, in their zest to leave Capitol Hill and go back into America, rejected that amendment, I believe out of a fear that it would mean they might be forced to come back the next day or the next week.

Then when the bill that is now before us first came before the Senate in February, on February 11, Senator ROTH offered a substitute that contained the Byrd-Gramm language from the crime bill, with its many cosponsors, the amendment that created the crime reduction trust fund, and set in law the reduction in the Federal work force.

Now we have before us a bill which has provisions in it to pay people $25,000, or up to $25,000 to retire early, to try to meet the targets of reducing the size of the Federal bureaucracy.

The bill before us that has now returned from the House has part of my amendment in it. It has the employment reduction targets. It has the enforcement mechanism. But it does not have a reduction in the spending caps, so there is no guarantee that the money cannot be spent on just anything, and it does not have the crime trust fund.

What I am doing in my amendment today is putting us exactly back where we were when the Roth substitute was adopted. So that when we are providing a mechanism to reduce the size of the Federal work force with a buyout, we are certain the money saved is not going to be spent on conventional programs and that it is going to be available to be spent only for the purpose of reducing violent crime in America. So this is a subject we have voted on many times. It is a very important subject.

I have a growing suspicion, Madam President, that people do not intend to see this money spent to reduce violent crime; that there are those who intend to spend it on other things. I do not intend to see that happen. That is why I have offered the amendment today. I hope it will get a strong vote.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time? The Senator from Ohio.

Mr. GLENN. Madam President, I yield myself such time as I may require.

Madam President, the buyout bill, which is the basic bill we are talking about here, is very important. It has a great deal of urgency. We are beginning to run out of our available time win-

dow on this legislation as far as having it do any good and do what it was supposed to be able to do.

The administration has proposed that we reduce the Federal work force by some 252,000 people. I support that. But I want to do it in the right way. The reason that we want to do it in the right way is not just to say, well, we laid off 252,000 people. What we want to do is restructure the Federal work force.

By restructuring, I mean we have the wrong people in the wrong places right now, and this buyout bill we are considering is what will let us then make sure the people who are let go are not just out on a RIF, a reduction in force basis, but done in a way that will let us get the people out of Government we need out.

Now, what do I mean by that? Well, in the civilian sector, the normal manager-to-employee ratio is about 1 to 15, and in labor-intensive industry it may be 1 to 20 or even more. The Federal work force through the years has gotten topheavy with managers. The military had that problem some years ago. We called it brass creep, as we got too many officers in relation to the number of enlisted, and we put legislation forward that took care of that and got that ratio back into a more normal alignment.

What we have with regard to the Federal Government is a 1-to-7 ratio, and so the people we need to get out are the GS 13's, 14's, and 15's. There needs to be some incentive because they are not the people who are going to volunteer to get out.

So what we are going to do if we just have the 252,000 work force reduction and we do that by just normal attrition of the 11- or 12-percent turnover a year that happens in the Federal work force, we are going to lose the lower paid people who, by and large, are the minorities, the women who are at the lower pay scales in Government. It is going to be a very unfair matter.

That is the urgency behind this bill. We need this legislation in order to correct that imbalance in the upper levels of the GS ratings as opposed to the workers at the lower levels.

So we are beginning to run out of time because with the limitations that have been placed on the administration budgetwise, we have some of the departments of Government that right now are having to start RIF's, reductions in force, without this buyout, and it is going to leave us with the same unbalanced structure we have right now.

That is the urgency of this bill. When the bill came through before, the Senate acted on it but it attached the crime bill to it because as some of the savings came out of the GS cutbacks as reductions in force, the savings therefore were going to be put over into the crime bill.

Now, I voted for that before. The House objects to that strongly. And so they have sent the bill back to us with a changed formula, and we can accept the formula they have sent back to us, I believe, as far as how they structure the percentages that will be paid into this retirement fund. The $80 active employee contribution each year for up to 3 years from each department will be paid back into the civil service retirement trust fund, a 9-percent agency payment, 9 percent of the final year of salary for each retiring employee will come back into the fund also.

The House sent it back with no reference to the crime bill that we had sent over to them, and that is what the distinguished Senator from Texas, Mr. GRAMM, is proposing we put back in the bill today.

Now, in an ideal world, I would like to just accept the House bill and pass it, but I realize we voted for this before. There is general support for it in the Senate. And even though the administration in the form of a letter from the Vice President dated March 9 urges us just to pass the House bill so we can get on with dealing with the original problem of GS ratings I mentioned a moment ago, I doubt we are going to be able to do that. I am sure we will not be able to do that.

Madam President, I ask unanimous consent that the Vice President's letter be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GLENN. Let me recount a bit of the history of this matter.

S. 1535, the Federal Work Force Restructuring Act, was first introduced on October 7 last year. On October 19, the Governmental Affairs Committee, which I chair, held a hearing on S. 1535. We marked it up on November 9. And on February 4, 1994, the House passed its version, H.R. 3345, and that bill was sent to the Senate.

The Senate then passed the substitute amendment to 3345 on February 11 and sent the bill back to the House. And so now we have the House version sent back to us again. This has been legislative ping-pong if I have ever seen it. But regardless of how many times we go back and forth, I think the game has gone on long enough.

The administration has stated repeatedly it desperately needs this Federal Work Force Restructuring Act so that Federal agencies can begin to downsize the work force by encouraging employees to resign or retire from Federal service. Agencies can downsize without resorting to reductions in force, to RIF's. And as private industry learned, unlike RIF's, buyouts also can streamline a work force without sacrificing morale or diversity.

We have had experience with that in the military over in the Pentagon in reductions in force. In addition, buyouts save agencies money because they cost less than layoffs.

The longer we wait to pass this bill the slimmer the opportunities become for agencies to use buyouts to down size in the way that we want them to down size.

The letter from the Vice President explains this also. Many agencies have said that the latest day they can use buyouts is March 15. Here we are March 11 referring to an amendment of the bill again. I just do not think we can continue to play around with the bill. We need to go to conference which we were willing to do some time ago. But it was up to the House at that time to call the conference under the rules under which we operate. So we never got to conference on it, and passing the bill with this amendment today will let us go to conference with it.

So while I would prefer to go with the House bill today so we could get into force as soon as we possibly could, I guess we are going to pass it today, I would be willing to accept this in the interest of getting on to the conference and accept it here.

I believe my distinguished colleague—correct me, if I am wrong—wants a rollcall vote on this particular amendment.

I reserve the remainder of my time.

EXHIBIT 1

THE VICE PRESIDENT,
Washington, March 9, 1994.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to express the Clinton Administration's strong support for the House-passed version of H.R. 3345, the Federal Workforce Restructuring Act and to urge the Senate to expeditiously pass the bill. This legislation is needed immediately in order for the Executive branch to reduce, reshape and retool its workforce without large numbers of reductions in force (RIFs).

The Administration is committed to reducing the deficit and streamlining government with as few involuntary separations as possible. However, caps on agency budgets will force agencies to cut employment—with or without "buyouts." The question is whether we provide for a more orderly downsizing through buyouts, or suffer large numbers of reductions in force (RIFs). The down side of RIFs is well known: they are costly, disruptive, and strike younger workers, many of whom are recently hired women and minorities. Buyouts, coupled with early retirement authority, permit agencies to target employees in unnecessary high level jobs and maximize savings.

Time to realize savings through buyouts is running out. However, the earlier the buyout legislation is enacted, the sooner the savings can begin. With buyouts enacted in Fiscal Year 1994, agencies can still cover the costs of buyouts even if senior people take early retirement as late as the third quarter. Not only does the agency save salary and benefits costs in future years, but with the nine percent agency contribution to the retirement fund, the retirement system breaks even over the long run because early retirees take a permanent pension reduction.

The bill as passed by the Senate included language from the Senate crime bill providing for the establishment of a violent crime reduction trust fund. As you know, the President strongly supports prompt congressional action on anti-crime legislation and the use of savings from reductions in the Federal bureaucracy to fund violent crime fighting activities. However, the Administration believes it would be more appropriate to consider the violent crime reduction trust fund in context of the crime legislation.

I urge the Senate to pass H.R. 3345 swiftly. Passing this bill will demonstrate to the American people our shared commitment to lowering the deficit and the cost of doing business in the government. In short, the Senate will have taken a responsible step toward creating a government that works better and costs less.

Sincerely,

AL GORE.

Mr. GRAMM addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. GRAMM. Madam President, I do not have a quarrel with my distinguished colleagues here today. But I have a big quarrel on this issue with some of the leadership of the House on the Democratic side of the aisle, and I am beginning to believe that I have a major quarrel about it with the administration. Every time we try to target this $20.8 billion, whether to apply it to deficit reduction, or use it to fund violent crime reduction, we are always running out of time. We were supposedly running out of time at the end of the last session.

So people who were for the amendment voted against it because they wanted the Congress to adjourn, and they did not want to be around here for two or three more days. The administration says that it wants to get tough on crime. But yet, it is increasingly clear to me that the administration does not want to dedicate the money that is required to do that.

The President came into office last year, cut prison construction by $580 million, cut FBI, and cut DEA. The Attorney General spent the entire year trying to overturn mandatory minimum sentencing, an effort that is still under way. Yet, the President in December had a conversion and endorsed the "three strikes and you are out" concept in the crime bill, and yet, when he submitted his budget this year, he cut prison construction again, he cut DEA again, and FBI funding is still below the projected level needed to maintain even the levels in the President's budget.

Now the Vice President who supposedly wants to pass our crime bill in supporting the President's position has sent a letter that says, well, look, this is an important matter, but we are running out of time. He says we shouldn't adopt this amendment because we are running out of time for passage of this bill. The House does not want to dedicate the savings from a limitation in the size of the Federal bureaucracy, either to hard deficit reduction or to fighting violent crime. They want to spend it on other programs.

Well, I understand running out of time. But I think the American people are running out of patience. With their opposition to this amendment, I am beginning to believe that the administration is not telling us the truth when they say they want our crime bill to become the law of the land. If we reject this amendment, our agreement on the crime bill is going to be overturned. I am going to believe that there is no intention when we come out of conference of having the Byrd language in that bill. And I believe that it is going to be important at that point for us to then begin the process of having a new crime debate.

So I hear that we are running out of time. I have no quarrel with any of my colleagues here. But my point is I believe the American people are running out of patience. I think they want to see this money either go to hard deficit reduction, or see it be spent fighting violent crime. We passed a bill with over 90 votes. This was a major element in it. Ultimately the House is going to have to support our position, or else this whole crime agreement is going to come apart.

So I am not running out of time. I am going to oppose this bill if it comes back without this provision in it.

I yield Senator ROTH 10 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. ROTH. I thank the distinguished Senator, Madam President. As he knows, I support the Gramm amendment, and urge its adoption. Its passage is essential to capture the $22 billion in savings created by this bill and dedicate it to fighting crime.

On Tuesday, after a 1-month delay, the House finally responded to the Senate amendment to H.R. 3345, the Federal Work Force Restructuring Act. The House action is curious in several respects. First, while the House suggests this is a matter of great urgency, it took nearly a month to respond to the Senate amendment.

Second, the House did not seek to clear in advance its amendment to the Senate amendment. As far as I know, the pending House amendment, which in some circles has been called a compromise, was fashioned unilaterally in the other body.

Third, the House amendment, and the statements delivered on the House floor in support of it, make no acknowledgment of the primary area of disagreement between the two bodies; namely, what is to be done with the $22 billion in savings realized from downsizing the Federal work force. The Gramm amendment would ensure that these savings are held available for the purpose of combating crime.

Today, the Senate takes action on this bill and does so without delay. It should be noted that while the other body complains about delay, this body has responded to the House actions on both occasions within hours—I emphasize within hours—of the House delivery of the legislative papers to the Senate. In contrast, the House has acted with total disregard of its own rhetoric of urgency. And the action taken by the House Tuesday, which completely ignores the primary area of disagreement, does not advance the cause but only forestalls the necessary resolution of the matter.

The Gramm amendment is not new to the Senate. Last November, the Senate in acting on the crime bill, agreed to an amendment offered by Senator BYRD that did three things: First, it ordered the reduction of Federal work force by 252,000 employees; second, it captured the savings from this downsizing, estimated to be approximately $22 billion by CBO, by lowering the discretionary spending caps by the amount of those savings; and third, it established a trust fund in a similar amount to be used exclusively for purposes of the crime bill that the President signs into law. The vote on this three-pronged amendment was 94 to 4.

Today, we are being asked to cast a vote on the identical provision that garnered a 94-to-4 vote last November.

On February 11, 1994, the Senate included this same amendment as part of the Senate substitute for H.R. 3345. At this time, 1 month later, this item remains as the only significant matter in disagreement.

Actually, the House has embraced the first of the three elements of the amendment by requiring a work force reduction of 252,000 employees. The disagreement is focused on the second and third elements. While the House would allow the $22 billion in savings to be spent on the general purposes of Government, the Senate bill and the Gramm amendment would fence off these savings from general appropriators by reducing the discretionary spending caps.

This is an important distinction. This legislation is a National Performance Review proposal "to make government work better and cost less." Normally, when you tell someone that something costs less, they expect to spend less rather than the same or more. The House bill, like the Senate bill, creates $22 billion in savings but, unlike the Senate bill, would turn the savings over to the appropriators to spend as they see fit.

How the savings are to be treated is not a question that can be avoided. Each House has a position. Those who suggest that the Senate position is unrelated to the legislation while the House position is related, unfortunately, do not understand how the budget process really works. If you reject the Senate language and the Gramm amendment, you allow the created savings to be spent on anything. If

you agree with the Gramm amendment, the authority of appropriators is restricted. The choice cannot be avoided as unrelated. Whatever course is taken requires Congress to choose what to do with the savings.

One argument that is certain to be made is that Congress should wait until the crime bill goes to conference to determine how the savings from H.R. 3345 are to be spent. The problem is that if we accept the House position, the savings may not be available if and when that time comes; the appropriators are being besieged daily by demands for all sorts of causes. If we do not fence off the savings we create, there is no guarantee that no one will appropriate them before the crime bill is ready.

The Senate has acted twice to earmark these savings for a crime trust fund, once on the crime bill and once on this bill. Either time, it was possible to argue that the provision was misplaced. When the crime bill was before us, one could have argued that it was inappropriate to spend savings that had yet to be created. Now when the bill to create savings is before us, it may be argued that the crime bill is not finished, so we should put off consideration of the matter.

The Senate has rejected these circular arguments. However, it is my impression that some Members of the other body would like to catch us in a shell game in the hope that the provision survives in neither bill. Then, as the originator of appropriations bills, the House would have first choice on how to spend those savings. It is my opinion that the provision is most appropriate as part of the bill that creates the savings, because there are no savings without this bill. But for those who believe we should wait for the crime bill to include this provision, I would hope that they would see that it is necessary to escrow the savings by reducing the discretionary spending caps, lest the savings be spent before the crime bill is enacted.

The third element of the provision establishes a crime trust fund. It is important that my colleagues understand that this element does not enact the Senate crime bill in its totality. Rather, it merely creates a fund to which appropriators may turn to pay for the programs that both the House and the Senate must agree on in sending the crime bill to the President for signature. Upon enactment of the crime bill, separate appropriations legislation will be needed to spend the savings of this bill to fight crime. I mention this to assure the other body that if the Gramm amendment prevails, it still remains for Congress to decide how much money is to be appropriated for what crime program. What the Senate version and the Gramm amendment does is merely to assure that the funds are there to fight crime.

What is so bad about that? The President on several occasions has endorsed the Senate provision. It is time that the House finally faced the issue squarely. I urge adoption of the Gramm amendment and ultimately the endorsement of the President's wishes to use the $22 billion saved by downsizing the Federal work force to combat crime.

I reiterate, Madam President, once again, my strong desire to meet promptly in conference on this bill. I stand ready to expedite this conference committee, and I urge the House to do exactly the same.

I yield the floor.

Mr. GRAMM. I yield 4 minutes to the distinguished Senator from Florida [Mr. MACK].

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

Mr. MACK. Madam President, when I saw this debate begin this morning, I thought it was appropriate—since this is an issue of deep concern in my State—that I have an opportunity to speak. I have taken a headline from the Florida Times Union of February 24, 1994. The headline says: "Prison Math? 'Life' Equals 5 Months."

This is the result of a crime that took place some time ago in the State of Florida. The crime was committed by an individual who had been arrested 32 times, had 6 felonies, and was out on early release. He broke into a home, beat a woman, tied her up, stole her money, stole her car, was arrested; and under a new law in the State of Florida, he was given life in prison. That was 5 months ago. The individual is now being considered for early release.

I want to say that again. This person was arrested 32 times, had six felony convictions and committed another crime while he was out on early release. For his latest crime, this individual was sentenced to life in prison, or so we thought. Next Tuesday, March 15, just 5 months after this villain was sentenced to life in prison, the parole commission in Florida will hold a hearing to determine if this individual should walk free. How many more innocent victims must suffer until we stop turning out prisoners?

The people in my State and, frankly, people all over the country, are saying that one of the first things we ought to do to fight crime is we ought to just make those people who have already committed a crime, who have been sentenced, serve every single day of their sentence. That is a requirement that we placed in the Senate-passed crime bill. It is associated with the establishment of a Federal regional prison system that would make prison cells available for States like the State of Florida, where this individual would not be out on early release.

So I rise today in strong support of the amendment that has been offered by the Senator from Texas, which basically says if we are going to spend the money—not that we have to spend it—but if we are going to spend it, we spend it on crime only. I plead with my colleagues to support that amendment. People throughout the entire country and people in my State are saying we have to keep criminals off of our streets. To repeat, this person had 32 arrests, 6 felony convictions, broke into a woman's home, beat her, robbed her, stole her car, was caught, convicted, and given life in prison. In 5 months, he is up for early release—that is wrong.

I have sent a letter to the Florida Parole Commission urging that this individual and every other convicted criminal remain behind bars and serve their full sentence. There are evil people out there who must be locked up and kept away. This individual is one of them.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, March 11, 1994.

GENE HODGES,
Chairman, Florida Parole Commission, Tallahassee, FL.

DEAR MR. CHAIRMAN: On March 15, Curtis Head, currently serving a life sentence as a habitual offender for the July 1993 brutal beating and robbery of a Jacksonville woman will be considered for early release.

Mr. Head must not be released. He is a convicted felon who must remain behind bars for his full sentence, unable to prey on other innocent citizens.

It is a slap in the face of Mr. Head's victim Deborah Liles and every innocent victim throughout Florida to even consider this convicted criminal for early release. It was only five months ago he was sentenced to life for breaking into Deborah Liles' home and savagely beat her, robbing her of her possessions and more importantly, her freedom. Her life was never be the same, her wounds have just begun healing.

Yet in five short months, Mr. Head is already being considered for early release from prison. The last time this convicted felon was granted early release from a previous sentence, it took only 56 days to find his next victim, Deborah Liles. If Mr. Head is released from prison this time, how many days or hours will it take before another victim is brutalized, another family is terrorized, another life shattered?

Mr. Head and all criminals must serve their full sentence. Justice demands no less. Early release sends a loud and clear message to criminals: "do the crime and you won't have to serve the time." Instead of places for punishment, prisons have become revolving doors—a stop-off where criminals rest between crimes.

This injustice has to stop. I fully endorse the effort of Stop Turning Out Prisoners to end early prison release. STOP understands the system favors criminals over the safety of citizens. STOP is turning to the people of Florida to end early prison release because the justice system won't.

We can't wait for the passage of the STOP referendum to end early prison release and keep Curtis Head behind bars. He must stay behind bars now. It's time to send the right

message to criminals: "do the crime and you will spend the full time." I urge you to keep Mr. Head locked-up and off our streets. Ms. Liles' safety and our safety depends on it.

Sincerely,

CONNIE MACK,
U.S. Senator.

Mr. MACK. In my State, there is an effort called STOP, Stop Turning Out Prisoners. It was put together by a group of victims of crime that have said enough is enough, it has to stop. I ask my colleagues again to support the Gramm amendment. We have to keep violent criminals off of our streets.

I yield the floor.

Mr. GLENN. Madam President, I yield myself such time as I might require.

The ACTING PRESIDENT pro tempore. The Senator from Ohio.

Mr. GLENN. Madam President, I would like to inquire of the Senator, because this brings up a point I brought up in previous debate on the crime bill. Forty-nine percent of the prisoners in our States are nonviolent prisoners. They could just as well be put in low-cost facilities, whether inflatable dome structures or Quonset huts or Butler buildings, like millions of Americans have lived in for many years of their lives.

I had an amendment in the crime bill that advocated States looking at this and trying to put as many prisoners as possible into that type of facility. We are doing a little bit of that in Ohio now. I talked to the Governor about it a couple of years ago, as a matter of fact, and they are now using some of these inflatable structures, like we see used for tennis facilities in the country. We could get people in and keep them in.

I saw a TV program where, I believe, in the State of North Carolina, of the sentences given to prisoners, one-twelfth of the sentence is the average served. It makes a mockery out of our criminal justice system. We spent a lot of money. We are going to put 100,000 new police on the streets. I do not quarrel with that, but we have police arresting people now that are not taken care of. Then we put more money into our system to make sure all their rights are protected. Then they stand up in front of a judge and get a sentence, and they should be put away. Where do they go? Into prisons that do not have space. Then we have to turn somebody out to put somebody else in. Obviously, the State of Florida, with somebody like this, who is a criminal of this magnitude, should turn somebody else out that is a nonviolent person to get this person in.

I want to create as many of these prisons as we need to take care of the violent prisoners, but I think we can do an awful lot in this regard by putting the nonviolent prisoners into the lesser facilities where they do not need all the expensive cells. The average cost is between $50,000 and $100,000 per cell for high security prisons of the type that are needed for the criminals like the distinguished Senator from Florida is talking about. It just points up the need.

I just wanted to point up the need for getting our prisoners that are nonviolent prisoners into lower-cost facilities. Do not keep them in the high-security prisons that are needed for things exactly like the Senator from Florida is talking about.

I reserve the remainder of my time.

Mr. SARBANES. Madam President, will the Senator yield me time?

Mr. GLENN. I yield to the Senator from Maryland 8 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I thank the chairman of the committee for yielding me time.

I want to speak to the underlying bill, the buyout bill, and underscore its urgency and its necessity.

We are moving further and further into the fiscal year and, of course, as we do that the opportunities to utilize the buyouts and achieve the savings that are connected with them diminish and diminish. Eventually it will be a moot point.

The House originally passed a buyout bill in which they waived the Budget Act. They did not pay for it in the short run because they recognized that over the long run there are enormous savings to the Government to be achieved by this legislation.

Consequently, they originally passed a bill by a vote of 391 to 17, representing virtually unanimous bipartisan support. The House was able to produce such a majority because they recognized that moving employees off the payroll voluntarily through this separation incentive would, in fact, achieve very significant savings to the Government over time and would also achieve reductions in many of the middle and senior management levels, which is exactly where the national performance review has identified excessive layers of higher paid personnel.

One of the Senate's objections was that the bill was not paid for and, of course, what the House has now done is send us a bill that is paid for. CBO has scored this legislation as budget neutral over 5 years.

Let me just address the problem with reducing the Federal workforce if we do not seek to achieve these reductions through a voluntary separation incentive program. The alternatives are two.

One is a reduction in force, a RIF, which is really a slash-and-burn approach with potentially devastating consequences for thousands of employees across the country and for the activities of the Federal agencies. In fact, I do not know of anyone who argues that this is a preferable way to achieve reductions in the number of employees as compared with the voluntary separation incentive program proposed in the legislation before us.

RIF's, as we know, are likely to undermine morale in the Federal workforce. They may also result in losing the very people you want to keep, the lower-level people, the people most recently hired, the ones, in effect, who have a future—or so one hopes—in the Federal service. They would also impact adversely on the diversity of the work force. When you really think about it, RIF's are very costly in terms of work disruption, low morale, reemployment obligations, and administrative costs.

What the voluntary separation incentive approach does, the so-called buyouts, is to enable agencies to target reductions in the workforce in a way that can improve the efficiency of their activities. Buyouts permit agencies to target organizations whose products are no longer needed, without harming organizations with higher priorities. It enables them to reduce middle management and overseers while still preserving vital front-line workers upon whom the agencies depend to actually provide the services.

The other approach is a combination of a hiring freeze and attrition.

These are the three approaches: RIF's, a hiring freeze and attrition, and voluntary separation incentives or buyouts. I have discussed the problems associated with the RIF's; I think everyone recognizes the impact on morale, work disruption, and reemployment obligations. They impact adversely on the workforce and do not really thin the workforce in the very places where you seek or need to do it.

Next is a hiring freeze combined with attrition, which means that as people leave the Government their positions are not filled. Again, most of the reductions come at the lower levels. You do not really get at the excess numbers of managers and higher-grade specialists through this approach. It also takes a longer period of time in order to achieve the desired reductions. In fact, it is estimated that a hiring freeze would require virtually 3 years to get the kind of numbers that we are trying to achieve in 1 year.

The buyouts allow an agency to target employee reductions in contrast to these other two approaches, RIF's or a hiring freeze and attrition, both of which are tremendously disruptive to the workforce. The voluntary separation incentives allow an agency to target employees in surplus high-level positions, thereby maximizing savings. It is the quickest, cheapest, and the most effective way to downsize the Government with a minimum disruption of services, while maintaining managerial flexibility in delivering services and in administering the workforce.

We have used the voluntary separation incentives before. They were, in

fact, authorized for the Department of Defense only last year. They have proven very successful. DOD's experience with buyouts is instructive. The Department has successfully used buyouts to cut its workforce. In fact, about half of the workforce reductions it achieved in fiscal 1993 were through the buyouts; the other half were achieved through normal attrition. Consequently, DOD suffered no real disruption to their workforce and no adverse impact on morale.

It is important to recognize that this is a technique also used extensively in the private sector. Seventy-nine of the Fortune 100 companies have offered their employees separation incentives, including corporate giants like General Motors and IBM. Furthermore, private sector separation incentive packages have typically been more generous, significantly more generous, than those proposed in this bill.

A survey by the University of Michigan in September 1993 found that the maximum separation incentive offered in this bill is 44 percent less than the mean—in other words, right in the middle—of the incentive packages offered to private sector workers by these large Fortune 100 companies.

In effect, the maximum benefit offered in this bill is at the mid-point of what these private companies are offering their people and, furthermore, DOD's average payout was less than $18,000, well short of the maximum that this bill provides.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. SARBANES. Madam President, how much time is remaining on this side?

The ACTING PRESIDENT pro tempore. Nine minutes 54 seconds.

Mr. SARBANES. I yield myself 1 minute and 54 seconds.

The ACTING PRESIDENT pro tempore. The Senator is recognized for an additional 1 minute and 54 seconds.

Mr. SARBANES. Finally, let me just close with this observation. The long-term salary savings from work force reductions will, in fact, far exceed anything that can be achieved under either the RIF or the attrition and hiring freeze approach. The clear superiority of buyouts as a work force reduction tool, in addition to the cost consideration, are significant nondirect cost factors, such as the ability to target the reductions, thereby maximizing work force efficiency as well as diversity, minimizing the disruption of the agency mission and maintaining work force morale.

So, Madam President, I close on the point on which I began, and that is the urgency now of achieving this buyout legislation. The further we move into the fiscal year, the less value buyouts have, because the offsetting benefits from the savings which result from not paying out the salary and benefits diminish with each pay period that goes by. Of course, in the lower-grade jobs, you are at that point now. The cost of the buyout is potentially higher than the savings that will be achieved in the current fiscal year. This negates it as a tool to be used to achieve our objective of reducing the work force, but in a way that is rational, sensible, and accomplishes this objective without having a negative impact on the workings of the Government.

As I indicated at the beginning, the House originally sent us a bill that was not paid for. They recognized the logic and the rationale of trying to move this thing forward and, in fact, they waived the Budget Act on a bipartisan basis with a vote of 391 to 17.

Objections were raised on this side regarding the pay-go issue, and the House has now sent us a bill that addresses the pay-go problem. This is an important step forward, it seems to me, in terms of some of the objections which have been raised on this side to moving the buyout legislation.

So I again close by underscoring the importance of getting this buyout provision into the law so we can move forward with a sensible, rational restructuring of the Federal work force.

I thank the Senator for yielding me time.

Mr. GLENN. I thank my distinguished colleague for his comments.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ROTH addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. ROTH. Madam President, I just want to point out that we all agree as to the urgency and the importance of getting this matter resolved.

But it is also important to understand that it has been the House that has been delinquent. This body has acted within hours on two separate occasions on moving this legislation, as we are today.

I have already had a discussion with my distinguished chairman. We are hopeful that, when this is reported out, we will have a conference within days; that it will begin early next week. Because we agree with the Senator from Maryland that it is important to resolve the matter.

But my concern and unhappiness has been that the other side, the House, has talked about urgency and yet has failed for over a month to call a conference, as is the normal procedure in this kind of situation. But the important thing is, time is of the essence and we are ready to act.

Mr. GLENN. Madam President, I did not yield time.

Was that taken out of my time?

The ACTING PRESIDENT pro tempore. The time was charged to the Senator from Ohio.

Mr. GLENN. I am sorry I gave that impression.

How much time do I have remaining and how much time is remaining on the other side?

The ACTING PRESIDENT pro tempore. Without objection, the time that was used by the Senator from Delaware will not be charged to the Senator from Ohio.

The Senator from Ohio has 6 minutes.

Mr. GLENN. How much time is remaining on the other side?

The ACTING PRESIDENT pro tempore. The Senator from Texas has 4 minutes and 38 seconds.

Mr. GRAMM addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. GRAMM. Madam President, we just had a very good and important discussion of what is at issue in the bill.

Let me say to our colleague from Maryland, I am for the buyout provision. I do not want to lay people off. I would rather try to use market incentives. I am delighted that the House has set up a fiscally responsible way of doing that by requiring agencies to absorb the cost.

I agreed to a time limit. I in no way want to hold this bill up.

But let me tell you, there is a greater emergency. We are faced with a greater time limit than just passing this bill. The greater emergency is that we have a criminal justice system which is the laughing stock of every hoodlum in America. We are going to have an opportunity today to take an important step toward fixing that.

I have offered an amendment that has previously been adopted in the Senate on several occasions. It is an amendment which has been endorsed by the House on two separate votes. It simply says this: With the $20-plus billion that we will save through employment caps, achieved with the buyout provisions in this bill to facilitate an efficient reduction in force, which everybody here, as far as I know, supports; with that $20-plus billion, there should only be two options: One, reduce the deficit and not allow one penny of this money to be spent on conventional Government; or, two, if it is spent, it has to be spent on dealing with violent crime.

So we take the money and put it into a violent crime trust fund. We lower the spending caps so it cannot be spent for other purposes.

Now, the issue here basically boils down to two things. First, it seems that the basic Democratic leadership of the House does not want to build these prisons. That is the first issue. The second issue is, they desperately want to spend this money on something else. I am trying to prevent that from happening.

I would just like to urge my colleagues, before I yield to my colleague from Utah, to look at the example that Senator MACK gave us. He spoke about

a violent predator criminal in his State who has committed 32 crimes, who has been convicted of 6 felonies, who broke into a peaceful home in a peaceful neighborhood, beat up a pregnant women, and took her car. He was arrested, convicted, sentenced, and he is about to be let out of prison after just 5 months.

Does anybody believe that he is not going to go out and do it again? Now, maybe some Members of the House believe that their homes are safe and that it is not going to happen to them.

What I have proposed today is an amendment that will let us start addressing this problem by building prisons, by entering into a partnership with the State of Florida and every other State, and by asking them to have a truth-in-sentencing provision so, when somebody is sent to prison for life after having committed numerous felonies, they serve the life term.

That is what the issue is about. If you want to do something about it, first vote for my amendment today and then join me in opposing this bill if it comes back from the House without this provision in it.

I yield the remainder of my time to the Senator from Utah.

The ACTING PRESIDENT pro tempore. The Senator from Utah is advised that there is less than 1 minute remaining.

Mr. HATCH. Will the Senator from Ohio yield me a few minutes?

Mr. GLENN. Madam President, how much time is left?

The ACTING PRESIDENT pro tempore. There are 50 seconds left on the side of the Senator from Texas and 6 minutes to the Senator from Ohio.

Mr. GLENN. I yield 2 minutes to the Senator from Utah.

Mr. HATCH. I thank both of my colleagues.

Madam President, I want to personally congratulate and express my appreciation to the distinguished Senator from West Virginia, who helped to establish this Byrd amendment, and the distinguished Senator from Texas, from whom the idea came to begin with.

We are talking about whether or not we are going to make a difference against crime in this country. Everybody here knows that the President, without this amendment, is going to have to abide by the budget formulated by OMB that cut the FBI, cut the DEA, cut the Justice Department, and cut the prosecutors at a time when we are all talking about trying to do something about crime.

Now, I know the President would prefer to have this amendment; so would anybody who wants to be serious about crime. This is the way to pay for it and it comes right out of Vice President GORE's suggestion.

It took a very ingenious set of Senators to come up with this methodology of paying for our anticrime bill. We all know what the big ticket items on that bill are going to be. I think both Democrats and Republicans have worked very hard on this crime bill and it would be absolutely tragic if we pass a great, big, grandiose, important, workable crime bill and then not put the moneys there so it can work.

I commend the distinguished Senator from Texas because he has, almost singularly, worked on these budget issues to find the moneys to be able to do what really needs to be done and he deserves a lot of credit as does my friend and colleague from West Virginia, without whom we would not be here today.

This amendment is extremely important. It is one we simply have to have. I know my colleagues in the House are upset about having it on here but they themselves ought to be wanting to fund the anticrime efforts in this society and to do it in a straight-up fashion, like the amendment the distinguished Senator from Texas is filing here today.

(Mr. MATHEWS assumed the chair.)

Mr. HATCH. Mr. President, this is a good amendment. If we are serious about crime, we have to do something about it. This is an amendment that will do something about it. In all the time I have been here, for the first time we will be able to have the moneys that will really make a difference against the criminal activity in this country that is ripping our country apart.

The Gramm amendment establishes a violent crime reduction trust fund and affirms the Senate's position that savings earned through personnel reductions must be used to fund the crime bill.

I was pleased to help craft this amendment when it passed as an amendment to the Senate crime bill last fall under the able leadership of the distinguished leadership of the Senator from West Virginia. I was also encouraged when it passed without opposition as an amendment to an earlier version of the buyout bill.

Regarding the buyout bill, I have expressed an interest in limiting the availability of buyouts to law enforcement agencies to those cases where the agency replaces any participating agent with a new agent. It is my understanding and hope that the conferees will visit this issue during conference.

Opponents of the Gramm amendment argue that this amendment should be dealt with during the crime bill conference rather than as a part of the buyout bill. Yet, given the seriousness of our Nation's crime problem and the troubling law enforcement cuts contained in the President's fiscal year 1995 budget, I believe it is critical that the Senate take steps to settle this issue.

Mr. President, resolving this matter as part of the buyout bill is not premature. In fact, President Clinton has already stated his support for using reductions in the Federal bureaucracy, which the buyout bill facilitates, to pay for the crime bill. At a recent speech before law enforcement officers in Ohio, President Clinton specifically enforced this concept saying, "I think it's a good swap."

At the same speech, President Clinton talked tough about crime, saying, "I care a lot about this problem."

Alluding to his years as a State attorney general and Governor, the President went on to say:

> I know what it means to double the prison capacity of a state, and to sign laws toughening crimes, and to * * * add to the stock of police officers and to deal with all the problems that are facing them. I know this is a tough problem. I also know it is a complicated one. It's easy to demagogue, easy to talk about, and quite another thing to do something that will make a fundamental difference in the lives of the people of this Country.

Creation of the violent crime trust fund will insure that we do in fact make a difference in the fight against violent crime. Yet, I am concerned that if the Senate fails to act on this amendment, the crime bill may not be fully funded. After all, President Clinton has delivered to Congress a budget that cuts Federal prison construction by nearly 30 percent, a $78 million reduction, cuts Federal law enforcement personnel, and cuts existing grants to State law enforcement. Frankly, the President's budget does not reflect the rhetoric of enthusiastic support for crime control and law enforcement he espouses. For this reason, I believe we must resolve the crime bill funding mechanism sooner rather than later.

The fiscal year 1995 budget cuts 1,523 Department of Justice law enforcement agency positions.

According to the Justice Department budget summary, the Federal Bureau of Investigation loses 847 positions, the Drug Enforcement Agency loses 355, the Department's Criminal Division loses 28, the Organized Crime Drug Enforcement Task Forces lose 150, and Federal prosecutors lose 143 positions. Absent the fiscal year 1995 budget cuts, there are still 431 fewer FBI agents and 301 fewer DEA agents today than there were in 1992.

At a time when violent crime and drug control are said to be national priorities, these cuts will reduce the effectiveness of Federal law enforcement, and the President's budget acknowledges this. The administration's own budget figures reveal that Federal prosecutors will be filing 527 fewer criminal cases in fiscal year 1995. The Organized Crime Drug Enforcement Task Force Program, cut by over $12 million, will investigate, indict, and convict fewer criminals.

Existing State and local law enforcement block grants, which police have been counting on, are also cut by over

$400 million in order to fund the crime bill's proposed police hiring program. As I stated earlier, the money to pay for the police hiring program is supposed to come from savings earned through personnel cuts not from existing law enforcement grants. Crime emergency assistance grants have been cut by $222 million, the missing children's program is cut by nearly $3 million, and regional intelligence sharing grants have been cut by $14.5 million to pay for the administration's community policing program.

Ironically, when it suits the administration's purpose, they will defend the preservation of Federal prosecutors and law enforcement strength. In testifying against the balanced budget amendment, Attorney General Reno recently stated that preserving adequate funding for the FBI, DEA, and U.S. attorneys' office are what our Nation so desperately needs to fight crime aggressively. She went on to state that the effect of cuts on Federal law enforcement could be "catastrophic."

At this same hearing, Attorney General Reno discussed the importance of adequate staffing for the Justice Department. She said:

I try, when I travel to different districts, to visit with the United States Attorney's offices. I ask one question when I go to these offices to begin a discussion. If you were Attorney General of the United States, what would you do to improve the operation of this office? And consistently they said we need more staff in the civil and criminal division.

There is a substantial increase in overall funding for the Department of Justice. Yet, instead of spending this money on Federal criminal law enforcement agencies, a bulk of this money goes to fund the Department's assorted civil branches. For example, the Department plans to bring more civil suits, 450 more cases, and more antitrust suits, 33 new positions are created. The Department plans to bring more environmental and natural resource cases, nearly 900 more cases given an increase of 78 positions.

There is clearly a need for fiscal restraint. Recognizing the need to address the budget deficit, Attorney General Reno has expressed a willingness on behalf of Federal law enforcement agencies and prosecutors to do their part to regain control over our Nation's financial well-being. But, in a budget of $1.5 trillion, priorities can and must be met. We must ensure that the sacrifices we ask law enforcement to make do not impair the Government's ability to meet its obligations to our Nation's law abiding citizens.

Cutting Federal criminal law enforcement positions, prison construction, and existing law enforcement grants programs is an unwise choice, especially in light of our Nation's crime problem. It is also certainly inconsistent with the President's stated position and the bravado we are hearing from the administration. For this reason, the Senate must adopt the Gramm amendment so that we can guarantee that the crime bill and the administration's promise to fund it are not an empty promise.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, in the short time remaining let me bring us back to the need for the buyout bill because I think it is important. It is important to all the people in civil service, the people who really make the Government run.

What has happened is basically out in the Federal workforce we have an imbalance between the managers and the people at the lower levels. When we do this 252,000 reduction which the administration has proposed, which I certainly support, if we do not have the buyout bill, we are going to get the wrong people out. We are going to have the people in the lower GS ratings, a high proportion minorities and women, who will be the ones forced out of Government while the people in the GS–13, –14, –15 levels will be the ones who stay in.

The imbalance there is we have about one manager for each seven Federal employees now. Business and industry have a ratio of about 1 to 15, 1 to 12 or 1 to 15 or in some labor-intensive industries, 1 to 20 is the ratio between managers and the rest of the employees. So what we want to do with this buyout bill is give the option to the administration, not just to go through RIF's, reductions in force, in which the lower level people will be the ones forced out. What we want is to give them the option to correct this imbalance. That is what this buyout bill would do.

The crime bill, of course, needs its funding. I supported that before and I support it again now. With the moneys saved out of the changes in the civil service ranks, the money saved through the years can go over into the crime bill which the Senate has voted in favor of before. So that is what the distinguished Senator from Texas has put back in.

I support that. I offered to accept the amendment. As I understand it, he still wants a rollcall vote on it, so I will be prepared to yield the remainder of my time.

Mr. ROTH. If the Senator will just yield the few seconds he has because I think the record should be clear we are all concerned and interested in downsizing in the most compassionate, humane way possible. That is the reason our committee has been concerned about this matter. It is the reason several years ago I came out with an early-out, to help "right size" Government.

We are all in agreement with the principles and goals of trying to downsize in a way so those who leave have a choice, so they are treated humanely, and it accomplishes the goals of retaining those employees necessary for good government.

Mr. GLENN. That is correct.

Unless there is further comment, time is passed, 10 o'clock, when we were going to vote. I yield the remainder of my time.

Mr. President, I ask unanimous consent the vote on the Gramm amendment occur at 10:25.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I rise today in strong support of the Federal Workforce Restructuring Act. This bill will ensure that we streamline Government as efficiently as possible. Reducing the Government work force through this legislation will permit agencies to target employees in unnecessary high level jobs and maximize savings. This will help meet the administration's goal of reducing the total Federal work force by approximately 252,000 employees over the next 5 years. This is a sensible and rational proposal for restructuring the Federal work force. Additionally the money saved through this downsizing effort will be targeted to help finance the omnibus crime bill which will help fund 100,000 additional police officers on the streets and ensure more effective punishment for criminals. I urge my colleagues to support this important legislation.

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I request the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Colorado [Mr. CAMPBELL], the Senator from Connecticut [Mr. DODD], the Senator from Iowa [Mr. HARKIN], the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Maryland [Ms. MIKULSKI], are necessarily absent.

I further announce that, if present and voting, the Senator from Delaware [Mr. BIDEN], would vote "aye."

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] and the Senator from Wyo-

ming [Mr. WALLOP] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 90, nays 2, as follows:

[Rollcall Vote No. 56 Leg.]

YEAS—90

Akaka	Feingold	McCain
Baucus	Feinstein	McConnell
Bennett	Ford	Metzenbaum
Bingaman	Glenn	Mitchell
Bond	Gorton	Moseley-Braun
Boren	Graham	Moynihan
Boxer	Gramm	Murkowski
Bradley	Grassley	Murray
Breaux	Gregg	Nickles
Brown	Hatch	Nunn
Bryan	Heflin	Packwood
Bumpers	Helms	Pell
Burns	Hollings	Pressler
Byrd	Hutchison	Pryor
Chafee	Inouye	Reid
Coats	Jeffords	Riegle
Cochran	Johnston	Robb
Cohen	Kassebaum	Rockefeller
Conrad	Kempthorne	Roth
Coverdell	Kerrey	Sarbanes
Craig	Kerry	Sasser
D'Amato	Kohl	Shelby
Danforth	Lautenberg	Simpson
Daschle	Leahy	Smith
DeConcini	Levin	Specter
Dole	Lieberman	Stevens
Domenici	Lott	Thurmond
Dorgan	Lugar	Warner
Exon	Mack	Wellstone
Faircloth	Mathews	Wofford

NAYS—2

Hatfield	Simon

NOT VOTING—8

Biden	Durenberger	Mikulski
Campbell	Harkin	Wallop
Dodd	Kennedy	

So the amendment (No. 1495) was agreed to.

Mr. GLENN. Mr. President, I move to concur in the House amendment, as amended, request a conference with the House on the disagreeing votes of the two houses, and that the Chair be authorized to appoint conferees.

The motion was agreed to.

The PRESIDING OFFICER. Under the previous order, the Chair appoints the following conferees.

The Presiding Officer appointed Mr. GLENN, Mr. PRYOR, Mr. SASSER, Mr. ROTH, and Mr. STEVENS conferees on the part of the Senate.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

NATIONAL SECURITY STRATEGY

Mr. THURMOND. Mr. President, last week the Armed Services Committee held hearings to receive testimony from the commanders in chief, or "CINC's," of the major regional and operational commands. The CINC's are the officers who will carry out combat missions in their theaters should conflict arise. One troubling conclusion that emerged from these hearings is the apparent lack of a sound, well-conceived national security strategy. At the same time a major news story appeared in the Washington Post which supported my fears that the administration lacks consensus and coherence in its approach to national security strategy. This is disturbing because a coherent, overall strategy should provide the basis for judgments about the resources devoted to defense and the force levels required.

How much Defense spending is enough in today's still dangerous world? How much security can we afford in today's economic climate? An agreed-on strategy can give us standards by which to answer these questions. It can provide consensus on what military spending should actually buy, and clarity about what we must defend. Without such standards, one man's budget cuts are just as valid as another man's increases.

Sooner or later America is going to face another test of the Nation's military capacities and national leadership. That test may be severe, and may come in a time, place, and circumstances not of our choosing. Perhaps it will come again in the Persian Gulf, perhaps in Korea, perhaps in the Balkans. But let there be no doubt, such a challenge will come.

Before the Nation confronts another challenge that demands American lives and resources, I believe the Congress and the executive branch must do better in making the case to the American people for maintaining a strong military, and what is expected of it.

In 1986, Senator JOHN WARNER, one of the Armed Services Committee's most prominent members, introduced the National Strategy Act which required the President to send to the Congress a report at the beginning of each year laying out the national security strategy of the United States. The purpose was to provide the Congress a solid foundation for decisions on Defense budgeting, programs, and force levels. Senator WARNER's legislation was incorporated into the Goldwater-Nichols Department of Defense Reorganization Act, which I supported.

The executive branch has not always met the requirement to submit the strategy document, and even when submitted it has generally been late. In addition, the National Security Strategy report has seldom met the expectations of those of us who participated in passing the Goldwater-Nichols Act. Nevertheless, the requirement for a national security strategy document was a step in the right direction.

I am taking this occasion to call upon the President to give the National Security Strategy report the attention it deserves. Moreover, I hope he and his national security advisors will go beyond a narrow vision of national strategy and a pro forma compliance with the act. In consultation with the Congress, I would like to see the Secretary of Defense and Secretary of State avoid parochial squabbling, and get involved jointly in developing overall national strategy. The joint effort would aim first at achieving consensus on the lasting principles that undergird our foreign policy, and clarify the vital interests which must be protected by military power. Second, it would identify potential threats, insofar as they can be identified in today's rapidly changing world. Then logically would follow the national security strategy to defend those interests, encompassing all the Nation's resources, diplomatic and economic, as well as military. From that would flow the national military strategy and state of the forces, which would deal with the specifics of funding, military capabilities, force structure, and doctrine.

Approaching strategy in this coherent way will give us the clarity needed to determine how many and what kind of forces we need. Without such clarity, it will be increasingly difficult to sustain public support for Defense spending, or public support for military intervention abroad when necessary to defend the Nation's interests. I reiterate that without a clear assessment of vital interests, threats, and military requirements, there is no basis by which to properly evaluate budget cuts or assess the adequacy of resources available.

Mr. President, in response to my call for a more coherent approach to national strategy, I expect the administration will cite the Bottom-Up Review conducted by former Secretary Aspin. It is not my intention to offer a full critique of the Bottom-Up Review, which in some respects was useful. At least it showed an effort to come to grips with some of the issues I have raised. However, in my opinion it was inadequate in many respects.

To begin with, it was not a true bottom-up review: it did not start at a zero base and build force requirements from that point. It appears instead to have started with a budget figure, and then constructed a force posture to justify it. It did not clarify the most vital U.S. interests to be defended. It did not adequately address the Clinton administration's commitment to a greatly expanded role in U.N. peace operations, nor set limits on U.S. peacekeeping and peace enforcement missions. Its underlying assumptions about the future of the former Soviet Union are not clear, and it did not adequately assess the possibility of a renewed threat from Russia if democratic reforms fail.

Despite the end of the global threat from Soviet imperialism, the world remains dangerous, uncertain, and unpredictable. Though uncertainty is increasing, that does not relieve us of the need to prepare for crisis. Today's uncertainty obligates us to prepare for the defense of the Nation and our interests as much as the cold war did. Yet today we have far less agreement on what those interests are, and how we

should defend them. The tensions that divide us must be resolved before they grow to undermine the foundations of national security.

Chief among those tensions is the issue of intervention in foreign conflicts. It is clear that America cannot live apart from the world's problems, which to a greater or lesser extent are our own. Today's new isolationists should remember that America, a maritime, trading Nation, has found it necessary to take military action abroad many times, even when the homeland was not directly threatened. We waged an undeclared naval war with France in 1797, defeated the Barbary pirates, fought Mexico and acquired new territories in the Southwest. We sent a naval force to Japan in 1854 to open up trade with that reclusive nation. We went to war with Spain and acquired new territories far beyond our traditional sphere of influence. We fought the Boxers in China, and sent Marines to Haiti and Nicaragua in the 1920's.

However, it should be clear to everyone but the most determined globalists that righting all the world's wrongs is impossible. Trying to do so will only leave us confused, weakened, and overextended so that we would not be able to meet our first responsibility, assuring our own safety and security. The American people understand this. They have made it clear they are not willing to substitute globalism for the primacy of America's interests as the foundation of U.S. foreign policy.

A second major tension is using the Defense budget to pay for domestic and social programs. Taking money intended for Defense does have an impact on our capabilities, and those who have succumbed to this temptation should remember that threats to America still abound. There are times when diplomacy by itself will not suffice and we will need a strong military to defend our interests.

On the other hand, we cannot give the Pentagon a blank check. We must also remember that war has shaped the modern collectivist state as much as any other influence. Perhaps it had to be; harnessing the Nation's resources to wage five major wars in this century, plus the cold war, required a powerful and therefore intrusive state. But supporters of a strong defense should never forget that the growth of centralized government and loss of individual liberty comes also from the warfare state as well as from the welfare state.

I believe that we as national leaders have a moral obligation to those who put their lives in danger for the Nation, to resolve these tensions and define clearly for what the Nation expects them to fight and possibly die. We need to do a better job of establishing national purpose and priorities, and giving direction to the services concerning what we want to achieve with U.S. military power, either by itself, or in concert with other Nations.

Mr. President, some of my colleagues might ask, what is the point of this philosophical discussion? For the skeptics who see no need for more clarity and consensus in our national security strategy, let me move from the abstract to the concrete. After all, I hope what I am advocating is practical, and will contribute to better decision-making in defense and foreign affairs.

First is the issue of defense spending. We recently passed a $10 billion emergency supplemental appropriation, which contained $1.2 billion to pay our bill for peacekeeping in Somalia, Haiti, and Bosnia. Those bill payers included $850 million in rescissions from the 1994 Defense budget. Important Defense programs were slowed or canceled because of these rescissions. But is this expenditure a better use of scarce Defense dollars than ballistic missile defense, for example?

The administration's fiscal year 1995 Defense budget request supposedly boosts readiness spending by $5 billion. But only about 20 percent appears to be devoted to genuine readiness and training of the forces. Perhaps this allocation is appropriate, but without more clarity for which the forces are getting ready, who can say with authority?

Regarding Somalia, our combat forces will be out by the end of March, and within weeks of our departure I expect Somalia may revert to clan warfare, followed by the hunger and disease that brought us there in the first place. In short order, it will be as if we had never gone to Somalia. Yet this operation cost 30 Americans dead and 130 wounded, and nearly a half billion dollars, much of it taken from operations and maintenance accounts or key Defense programs. Had we gone through the national strategy and state of the forces exercise I am calling for, we might have been able to determine in advance if Somalia was worth this high price.

Last week in Bosnia we have taken the first steps of a possibly wider military involvement. I support the limited intervention by NATO to lift the siege of Sarajevo, and the enforcement of the no-fly zone over Bosnia. But I cannot help but ask: where will these steps lead? How many American dead and wounded are we prepared to accept? How many scarce tax dollars are we prepared to expend? Do we have vital national interests at stake, and if so, what are they? I am not saying we have none, only that we need to have clarity and consensus before we ask the American people to send their loved ones into the third Balkan war in this century.

As much as we might wish otherwise, the world of the future will not be a peaceful world. There will be "wars and rumors of wars." America and North Korea are on a possible collision course. South Africa is headed toward possible break-up and civil war after the April elections. Iran and Islamic revolutions may challenge the United States in the Persian Gulf. The future will not be forgiving if we blunder into conflict blindly, or fail to act when our interests are challenged. We had better start now to build consensus on America's interests in the world, develop a coherent strategy to defend them, and ensure the means to carry it out.

Mr. President, I intend to offer additional thoughts from time to time on important questions of defense policy and strategy, which I hope will contribute to the national security debate by illuminating first principles. These principles abide, even in today's uncertain and changing world. They determine Defense budget decisions—or should. They can give us a fixed reference point in these difficult and challenging times. Unless we return from time to time to these abiding principles, we run the risk of wasting precious American blood, treasure, and moral energy on barren concepts unconnected to America's needs, or to the cause of liberty and justice in the world.

Mr. President, I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER (Mr. WOFFORD). The Senator from Pennsylvania.

NATIONAL COMPETITIVENESS ACT

Mr. SPECTER. I thank the Chair.

Mr. President, I have sought recognition for a few moments to state that I intend to oppose cloture on the National Competitiveness Act of 1993. I would like to articulate my reasons for that judgment, because I think that opposing cloture, otherwise known as a filibuster, should be employed only on rare occasions in the Senate, because I firmly believe in the majority rule, that is 51 votes out of 100 and not to require 60 votes.

But I have come to this conclusion because of my views that this bill is too expensive in its present form, but fundamentally on my response to the tactics of the majority.

Last night's debate I found very unfortunate. I decided not to respond in the heat of the moment, but to reflect on the matter overnight.

But, essentially, the Senator from South Carolina, who is on the floor, I found his comments about the Senator from Missouri unwarranted, unprofessional, and unsenatorial. The Senator from Rhode Island commented at greater length yesterday and I do not intend to say anything further.

But the manager's position and the majority's position reminds me of what happened on the stimulus package last year when, with great reluctance, I joined all the other Republicans in a filibuster.

I found that difficult because there were so many items in that stimulus package which I thought were important, especially important to my State, Pennsylvania, the same State as the presiding Senator here today. But I did so because of the tactics of the manager of the bill when the tree was tied up initially, even drawing protests from Senator BREAUX and Senator BOREN on the other side of the aisle. And I did so after a scathing attack on the Republican leader, Senator DOLE, and efforts by this Senator as well as others to respond which were not met.

It seemed to me, in the context of what was happening there, difficult as it was, I joined all other Republicans in a filibuster and in opposing cloture, which was hard to do, but, as I say, I did so because of those reasons on something which I think ought to be employed very, very sparingly.

I think we are at that point on this bill today. And I think that beyond the tactics which I have referred to, but I think that on the substance of this bill.

I also thought, parenthetically, that the stimulus package last year was too expensive, some $1.9 billion on projects which already had funding in the pipeline. But they were important matters—youth employment programs for cities like the big cities of my own State.

But, as I have taken a look at this program, this National Competitiveness Act of 1993, and I see its total cost, it seems to me that it is excessive in light of the problems of deficit spending and the national debt.

We have for the current fiscal year, fiscal year 1994, expenditures of some $526 million. Under this bill, the authorization would rise in 1995 to $1.370 billion and then in 1996 to $1.478 billion. In my judgment, that is excessive and unwarranted in light of the deficit and in light of the national debt.

I have a problem philosophically, which I expressed briefly earlier in the debate on this bill, on having the Government pick winners and losers. When the Senator from Missouri offered an amendment which would make the research and development tax credit permanent, I joined in that. It was a somewhat involved procedural matter, where the amendment called for no appropriations and then for the Finance Committee to use the funding for a permanent research and development tax credit, which I think to be the preferable course, where it is not the Government making selections and awards but it is the private sector expending private sector money and making judgments and having the research and development tax credit.

I note, Mr. President, that under the pending bill there is a program designated as an Advanced Technology Program with Government grants to selected high-technology industries.

My own view is that while it is fine to have a stimulus for high-technology programs, I am very skeptical about the wisdom of having the Government make the selections as to which of those high-technology programs are going to get Government grants.

We have done wonders in the United States. It is as a result of our technology and as a result of the free enterprise system. I had occasion to be in France recently to take a look at their economy. And to focus just a moment on productivity and ingenuity in America, where we developed the airplane and automobile and electricity and nuclear energy and the atomic bomb, that has been as a result of what the private sector has done. That is why I am so reluctant to see the Government start to make the decisions.

In my 14th year in the Senate I have grave reservations about governmental judgment, something that was reinforced yesterday when I sat on the Defense Appropriations Subcommittee and asked a question about nuclear waste disposal and got an answer from the Chief of Naval Operations which strained credulity, saying we had a way to dispose of nuclear waste.

So frequently, when we look at what the Government does and what the Government spends money on, we wonder why. But if the private sector puts up the money, then they are at risk. That is why I am very reluctant to see such an enormous expenditure undertaken.

At the same time, I am concerned about research and development and I am concerned about stimulus. After reflecting on the matter, it is my view that the amendment offered by the Senator from Colorado last night, [Mr. BROWN] probably strikes the appropriate balance, that is at some $1.5 billion. It is still probably too much. It may be too much, but at least it would be an accommodation.

I am advised by the Senator from Missouri he has had discussions with the Senator from South Carolina about a lower figure, which would not result in a Republican effort to defeat cloture, that is, to carry forward on a filibuster. I think filibusters are highly undesirable, Mr. President, on grounds of principle and especially now, given the public reaction and public disdain for gridlock.

The Congress as a unit has never been very popular. It has seldom been more unpopular than it is now. That in part is driven by the public view that we are fractured and we are partisan and we are political and we are wrapped in gridlock. That is why I do not like to see filibusters on this Senate floor so the American people see disagreement about which they have an instinct, largely true, that it is partisan and political. I, for one, do not like seeing the partisan votes where virtually everybody on that side of the aisle lines up that way and everybody on this side of the aisle winds up the other way.

My record in the Senate, now this 14th year, demonstrates my independence. I have been in the minority on this side a great deal as I have seen the individual issues. I think too frequently in our body people are unwilling to exercise independent judgment. I am not ready to respond in a knee-jerk reaction to a request to filibuster.

When the Senator from Missouri asked me to support that earlier this week, I replied in the negative. When the assistant Republican leader made the same request I gave the same answer. When the Senate Republican leader asked the same thing I again declined, as recently as yesterday evening. But what I saw last night has convinced me we have to take a stand and we have to oppose the kind of tactics which we have seen on this bill. We ought to take a stand to reduce the cost of this measure, acknowledging the value of research and development but not having the enormous increase to in excess of $2.8 billion.

If I had to pick a figure, frankly, I would pick a figure lower than the figure picked by the Senator from Colorado [Mr. BROWN] last night—$1.5 billion. But I intend to support a filibuster permanently until the figure is reduced to $1.5 billion on this pending legislation.

I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. Will the Senator from South Carolina wait for a moment?

NATIONAL COMPETITIVENESS ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 4, which the clerk will report.

The bill clerk read as follows:

A bill (S. 4) to promote the industrial competitiveness and economic growth of the United States by strengthening and expanding the civilian technology programs of the Department of Commerce, amending the Stevenson-Wydler Technology Innovation Act of 1980 to enhance the development and nationwide deployment of manufacturing technologies, and authorizing appropriations for the Technology Administration of the Department of Commerce, including the National Institute of Standards and Technology, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Brown Amendment No. 1493, to institute a cost share requirement for single business applying for funding the Advanced Technology Program of the National Institute of Standards and Technology.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the Senator from Pennsylvania just commented. I was trying to listen at the same time. If I am correct, he said the comments I made at some time last evening were uncalled for and unsenatorial. I wish the distinguished

Senator would refer to those comments so we will know exactly what he is talking about.

Mr. SPECTER. I am talking about the comment where he said the Senator from Missouri was hypocritical. And he had another comment. The RECORD has been reviewed. It was just the subject of discussion in the Republican Cloakroom.

I make an inquiry of the Senator from South Carolina if the Senator from South Carolina has altered those comments as they appeared today in the CONGRESSIONAL RECORD? Has there been any alteration in those comments as they appear today in the CONGRESSIONAL RECORD, Senator HOLLINGS?

Mr. HOLLINGS. Not that I know of. I am just trying to get the RECORD right now. This is what it was. It is shown to me here:

Mr. President, the RECORD will be printed there, and I constrained myself. I can tell you that right now. I referred to the facts, and he does not like being corrected by way of facts. The reason one uses the word, "monkeyshines," is a polite expression maybe for hypocrisy, for the simple reason you cannot come moving in Sematech for the semiconductor industry, moving if you please for the private aircraft industry, going along with the sales and everything else, and come on this bill and say, with technology, now that this is a whole new venture. We know it is not a new venture.

Is that what you referred to?

Mr. SPECTER. I refer specifically to the comment "monkeyshine" and the comment "hypocritical." My reading——

Mr. HOLLINGS. I did not——

Mr. SPECTER. If I may finish? Rule 19, I believe it is, prohibits and looks askance at comments which are made of a personal nature. I believe that when there is a statement that a Member of this body is hypocritical, I believe that is personal. I believe that is inappropriate under the rules.

Mr. HOLLINGS. That is exactly why I did not call the Senator hypocritical. They pressed me on the word "monkeyshines." I said it is a polite expression, maybe, for hypocrisy, for the simple reason—and I went down, exactly what I said. I will elaborate and perhaps it is a good time now to clear the air with respect to this in the RECORD, because I am proud of myself as a Senator, I am proud of myself at the decorum in the Senate here that we have, and my adherence thereto.

There was another occasion, and we can get into that, where the distinguished Senator from Pennsylvania came to the floor and distorted the RECORD. Let not this one be distorted. Simply stated, I have worked with the distinguished Senator from Missouri on this bill.

Mr. SPECTER. Will the Senator from South Carolina yield to tell me where this Senator distorted the RECORD? Where did I distort the RECORD?

The PRESIDING OFFICER. The Senator from South Carolina?

Mr. SPECTER. "Distortion" is another characterization, Senator HOLLINGS, which is uncalled for under rule 19. That is a charge, an accusation. Now back it up. Where did this Senator distort the RECORD?

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. It was quite some time ago, Mr. President. I will go right to that RECORD with respect to Senator METZENBAUM.

What really occurred there was that this particular Senator was handling a bill. It was a very sensitive subject—and, incidentally, involved the distinguished Senator from Missouri at the time. The RECORD will show—and then was later removed, and I have been trying to find it since, because certain staffers came and got that RECORD. But Senator Baker would remember it. He was the majority leader at the time.

And what happened was that we were arguing about religion and with respect to prayer in the schools. And we had had the exchange between the distinguished Senator from Missouri and the Senator from North Carolina referred to as the "Lay leader," the "Baptist lay leader," and the "Episcopal minister."

I think at that particular time, I am confident the Senator from Maine came on the floor, Senator MITCHELL, and we heard from Judge MITCHELL. So then I referred to myself as the Lutheran Senator. We were doing that in the lightening of the moment at the particular time, and this is where the distortion comes in.

I was not alluding to Senator METZENBAUM in a disparaging way as a Jewish Senator or anything of that kind. When Senator METZENBAUM came in right behind me and he sought recognition, I turned to him and said, "We will now come and hear from the distinguished Senator from B'nai B'rith." He took exception, and I immediately apologized.

That is where it ended for about an hour and a half until the Senator from Pennsylvania came all the way to the floor, as he comes this morning, and stating that the RECORD was offensive and he put it totally out of the whole cloth. I went back to get those references from the original transcriber's notes and was never able to find them. The distortion was in the context of what it was not at all. We were all talking and referring at that particular time. I did not do it in a smart aleck way or anything else like that. I had done it in a light way, referring to the distinguished Senator from Ohio and therein is what I was referring to when the Senator from Pennsylvania came down and took exception.

Thereupon, Senator Baker came on the floor and we had an exchange, and everything, and I thought then the feelings were all settled down. But he alluded, as he has come to the floor at this particular time, taking exception to me and how I insulted everybody and everything else of that kind. That was the distortion I referred to.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am fascinated to hear the Senator from South Carolina defend his accusation that I distorted the RECORD by reference to an event which happened in 1981. It could have been 1982, but I believe 1981. I thought that when the Senator from South Carolina was charging this Senator with distortion that he was referring to something that I had said this morning.

I remember the incident very well. It was just a few months, I believe, after I had come to this body. I believe it was in the spring of 1981, and I had an office in the Russell Building. I did not come all the way over today to make a statement. I was here for a vote and waited to make that brief statement. But in 1981, I did hear the comment on the squawk box, and I did hear the Senator from South Carolina refer to the Senator from Ohio [Mr. METZENBAUM] as the Senator from B'nai B'rith. I was very much offended by that comment.

I do not think it is humorous, and I do not think that it is explainable in terms of an earlier comment which the Senator from South Carolina may have made referring to his own religion.

I came to the floor of the Senate, and I walked up to the Senator from South Carolina and I said to him, "I'm about to make a statement on the floor that I thought what you said was inappropriate." I am virtually certain I used the word "inappropriate" in my comment to the Senator from South Carolina, and I did not characterize it anymore harshly than that, although I felt very, very keenly about it.

It may be that there is some difference between being a member of the religion of the Senator from South Carolina in this country as opposed to being a member of my religion in this country. Maybe there is a difference, or maybe his experiences are different from mine. But I deeply resented that comment about Senator METZENBAUM being the Senator from B'nai B'rith. I took the floor—and it was not easy to do being a newcomer here—to take exception with a Senator who had been here since 1966, 14, 15 years at that time.

After I made the comment, Senator Baker came to me and he said to me, "ARLEN, Senator HOLLINGS and Senator METZENBAUM want that matter expunged from the RECORD." But the rule is that all the Senators have to agree before it will be taken out of the RECORD. I said to Senator Baker, "Howard, I don't want to do that." A short conversation followed, with Senator Baker's persuasiveness, and I said, "I'll think about it."

Later in the day, perhaps an hour or 2 afterward, I said to Senator Baker: "Since Senator METZENBAUM wants it, since Senator HOLLINGS wants it"—Senator Baker represented to me—"I will agree to it, Howard, since you wanted it and you are the leader here, on the condition that there is a spot in the RECORD which shows that something was expunged, something was taken out of the RECORD," because I do not like altering the RECORD.

I do not like doing that. I have great problems with the practice in this body of doctoring the RECORD, changing the comments which were made, beyond the exception of grammatical changes. I do not think that is the right thing to do, but that is what I did at that time.

Since the Senator from South Carolina has brought up the subject, I would ask him if he requested that that segment be expunged from the RECORD in 1981, as Senator Baker represented to me that Senator HOLLINGS had made that request?

Mr. HOLLINGS. I definitely did not. In fact, I said for the RECORD—and did not get it in time—I said to the staff that the Senator from Pennsylvania totally misunderstands the context. I never could get the RECORD, and I would like to have that RECORD now. Maybe if the original notes of the stenographer—I asked for them and have never been able to find them, because it seemed like a crass remark, a remark totally out of taste and totally out of context, and it was not, because that is how the reference was made at that particular time.

I am confident Senator HELMS will tell you that. I am confident the Senator from Missouri will tell you that, because I remembered we referred to the Baptist leader, the Episcopal minister, the Lutheran Senator. It was all three of us at that time, and that is why when we turned—to keep the same mood and lightness of it because we did not want to get heated into a religious thing. I could explain the context and I wanted that explained and I did not want the RECORD—in fact, I sent and even asked that somebody go back to the original notes, even though the printed part was there. Maybe they had on one of these machines, or whatever, that original record.

But I have explained that and, of course, fortunately the community down home, in my hometown, understands exactly what was said. I want to get into this other part of the RECORD here in just a minute and tell you exactly my feeling on that one.

But they immediately sent three TV crews from New York. They went to the various temples in my hometown of Charleston, SC. I have always had the friendship, the warmth, the understanding, the support and—the best compliment of all is to have a misunderstanding, Mr. President, of this arise and the best compliment of all is to try to get some critical statement by a community or an individual. And they reviewed all over Charleston, spent the whole weekend and never could get one.

That was the greatest compliment of all, because they know me, understand me and I am not that kind of person. That is why I apologized immediately to Howard. I said, "You know, I didn't mean to offend you." I apologized immediately. It was sometime later when the Senator from Pennsylvania, after the apology and the understanding was had, came to make a Federal case of it.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, we have been nearly 5 full days on a bill that is very similar to a bill that was passed in less than 5 minutes 2 years ago. Most of the amendments that have been proposed to this bill, and almost all of the debate that has occurred in that 5-day period has had nothing to do with the bill. That has, of course, been true of the discussion this morning.

I recognize that the rules of the Senate are such that any Senator can talk for as long as he or she wishes at any time on any subject, and that any Senator can offer an amendment at any time, even though it has nothing to do with the subject. But I cannot recall in my 14 years in the Senate and my more than 5 years as majority leader an occasion in which the debate and the amendments have, in the aggregate, had so little to do with the subject.

There has been very little discussion over the past 5 days about this bill, about what this bill is trying to do, and the debate has ranged over a whole range of issues that have nothing to do with the bill.

Yesterday, for example, we had a debate and discussion on espionage matters. In the previous days, we had debate and discussion about other things that have nothing whatsoever to do with this bill. And I expect that several more of the amendments are going to relate to matters that have nothing whatsoever to do with this bill.

That is obviously permitted within the rules, but I would hope my colleagues could exercise some restraint, both with respect to the subject matter of the amendments and the subject matter of the debate. It is clear that Senators can get up and talk for as long as they want about anything they want to say. It is clear that Senators can continue to offer amendments that have nothing to do with the bill that is before us. But I submit that at some point any useful purpose in such efforts is passed and that it is now an appropriate time to get back to a discussion of this bill.

Any Senator has a perfect right to vote against this bill if he or she wants to. Any Senator has a perfect right to get up and explain why he or she will not support this bill. But I think this discussion has already gone too far afield, and I implore my colleagues to now permit a return to consideration of the bill. I hope we will get an amendment that has something to do with this bill as opposed to the continuing series of amendments that have nothing or little to do with the bill, and that we can, through the exercise of restraint, concentrate our efforts and our words and our activities on the pending legislation.

Obviously, I cannot impose any such standard on Senators. That is up to individual Senators themselves. But I think that we have reached a point where we have gone much further afield, much further from the subject than is appropriate, necessary, or even desirable. I ask my colleagues, does anybody have anything to say about this bill, which is supposed to encourage economic growth and promote economic growth and create jobs in our society?

I hope that we can focus ourselves on the bill. Much has been said, and we obviously cannot change what has been said or undo what has been done. But my hope is that we can now return to a discussion of this legislation and hopefully act on it one way or the other.

Mr. President, I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I appreciate the comments of the majority leader. I have an instinct that they may have been made as a cooling-off period as much as for substance, but I appreciate the substance of what he has said, and I agree with the substance of what the majority leader has said.

I took the floor for a few moments, and I have spoken only once on a matter directly relevant to this bill—I do not make a practice to speak on other matters—and I referred very briefly to the comment of the Senator from South Carolina last night, which I thought was an important point to make, albeit briefly, on my reasons for voting against cloture.

I am not sure what the count is over here, but I think my vote may be enough to defeat cloture, or my reasoning may be enough to attract at least two Republican Senators who wanted to vote against cloture on the first vote, to vote against cloture beyond the first vote. So that I think my comment on my position for a vote is directly related to this bill as this body works, and as there is a unification of Republicans in response to what happens on the other side of the aisle. So I think it was directly relevant.

When the Senator from South Carolina said that this Senator had distorted the RECORD, that brings a rather

vehement response. I do not take that comment lightly at all. And based on what he has said, he has not made any statement of distortion. He said that when I complained about his comment about the Senator from B'nai B'rith, it was taken out of context.

Well, now, at worst, being taken out of context is totally, totally, totally different from a distortion. But when he says it was taken out of context, I do not believe, Mr. President, that there is any acceptable context of saying to any Senator that he is a Senator from B'nai B'rith. And I do not believe that there is any acceptable context to making a reference to B'nai B'rith, someone's religious affiliation.

And when the Senator from South Carolina refers to Episcopalians and Lutherans, I do not know what it is like growing up as an Episcopalian or a Lutheran. I have an instinct that being a part of majoritarian America is a lot easier than being a religious minority, and I will not detail why I feel that way. But it is true even in Russell, KS, even in a small town like that, it is different.

Now, I have great respect for the Senator from South Carolina. In the 14 years that I have been here, we have had a good relationship, and I expect us to disagree from time to time. When the Senator from South Carolina makes a comment that he has been lauded by the Jewish community in his home State, I can understand that because I do not think that there is any animosity or any deep-seated ill feeling by the Senator from South Carolina. I think that these are comments which were made in the heat of the moment.

I have respect for him, and I do not suggest to him in any way that he has any religious bias. I think we will continue to have a good relationship in this body. But that will not stop me when I hear him make a statement as I did in 1981, or when I heard the statement that was made last night.

I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I understand and appreciate what the distinguished Senator said. Mind you me, when I said start the Record or the situation, what I said, and continue to try to describe to all people of good will—in order to understand—would look at the context. I would agree categorically you do not refer—I do not know the religion of the Presiding Officer; never thought of anyone else. But we were discussing religion at that particular time. I wish I had that Record. You go ask our colleague, JESSE HELMS. He will tell you. He said, well, as a lay Baptist teacher, Sunday school teacher, Bible reader—or however he described himself, and the Senator from Missouri as an Episcopal minister, and then I referred to myself in the same facetious vain.

Now, when you have Senators talking about prayer in the schools, and religion, and another Senator comes up and you do not refer to his religion, in a way, that is the sensitivity that we have in the South. They say: Wait a minute; you referred to the others, but you do not refer to the one?

That is how sensitive we are. It was not intended at any time to hurt Senator METZENBAUM's feelings, and he knows that and I know that. We have had the best of relationships since that time. I did apologize immediately. I said that was not the intent, and then he finally understood. He had not heard.

I appreciate the respect the Senator has for me, and I have tremendous respect for the Senator, but that was an unfortunate situation. Those kinds of things continue to get reported and reported out of context. They do not go into the scene as it was set.

I agree with the Senator categorically; you do not walk up and refer to anybody by their religion. But when you are discussing religion in the Chamber of the Congress here, and each is pointed out in their singular religion, which we were, and then another Senator comes and yields, that is why, in the light moment that we had, we were trying to lighten it so we did not get too serious and too much feeling in that particular subject matter. And it passed at that time.

Mr. MITCHELL. Mr. President, will the Senator yield?

Mr. HOLLINGS. Yes.

Mr. MITCHELL. Mr. President, by definition, the incident now being discussed occurred 13 years ago. It was discussed extensively at the time. I believe no useful purpose is served by raising it at this time, discussing it, and debating it further.

I would like to again implore my colleagues to get back to the bill. I hope and encourage my colleagues to do so.

This matter is over 13 years old. No purpose is served in it being brought up again here today and debated here today. I hope very much that my colleagues will go back to the bill.

Mr. HOLLINGS. I appreciate the majority leader, and I appreciate the respect and friendship of my colleague from Pennsylvania.

Mr. President, let me get right to the point here with respect to this bill and the tremendous frustration one must encounter. I know the Senator from Missouri. We work closely together. He was chairman and I was ranking member. I am chairman now, and he is ranking member. I was making the case that these programs are peer reviewed; these programs do not become pork barrel.

So it is with the National Science Foundation. I do not have to quote the Senator from Missouri. But he asked questions at that particular time. There was a Rockefeller amendment. So we got into the issue of peer review at that time. That is years back.

Early on this particular bill, I can mention several others who addressed the issue of peer review. I just quote myself because at the hearing on this particular measure, I was then talking with the Senator from South Dakota [Mr. PRESSLER] and we were talking about these manufacturing centers. I quote:

> Since they have been characterized as "Hollings centers," let me level with everybody. I am also chairman of the Subcommittee on Appropriations. I met with my counterpart, Congressman Neal Smith over on the House side, and it has been contended that we have a struggle over this thing even going on now. And one of the grave misgivings of everybody is that this is not going to be pork. Incidentally, the Senate's record is pretty good on that. In last year's highway bill, the Senate did not have a single demonstration project when we passed the highway bill; we did not have any pork. Pork came about later in the conference.

I think it was $400-some million:

> On this particular score, there is not going to be any pork.

And gave my State proposal a double review, talking about that particular program. So I told my counterpart, Chairman SMITH. I said:

> Look if we start putting or writing into this bill these centers, manufacturing centers, the program is dead. It is going to become pork. It has got to be administered by the Secretary of Commerce with peer review. So I thought publicly you and I have not had a chance to discuss this, but this was a wonderful opportunity for everybody to understand the ground rules. There is no pork in this one. There is no rural or urban development. It is getting together the financial effort and interest in technology, whether it is in South Dakota or South Carolina.

So there has been a sensitive point with me to hear opponents come to the floor and say of S. 4 that we will have holes in our pockets, and pork barrel, and here is this big sum of money. I could not understand that argument, my colleagues, because we have gone out of our way to avoid exactly that. I obeyed the ground rules. I enforced the ground rules over on the House side about it, and then when we finally come to this debate, you hear the argument that these safeguards and restrictions are not in the bill.

I thought that was a tremendous misrepresentation, and still think so when they try to refer to it that way. And, I said, "What in the world is going on?" Nobody seems to understand the bill. The Senator from Wyoming finally furnished us a release which quoted the chairman of the Democratic Party in April of last year saying, "By gosh, we are going to get the Commerce Secretary and we are going to put the money in out here in California. It is important to carry in the Presidential election, and the Secretary is going to correlate the effort." But he was not talking about this bill. He was talking about how the training

funds and other accounts that the Secretary of Commerce has no access to or jurisdiction over.

So I said, now hearing the ranking member talk about burning holes in the pocket, and pork, and then hearing the Senator from Wyoming's charges, no wonder we have a fever on the other side of the aisle that this is a pork barrel bill, and too much money, despite the fact they all voted for it.

That is one of the particular frustrations that has made me call the position on the other side of the aisle a "monkeyshine." You can call it "fanciful." You can call it other words. I was restraining myself, and am still restraining myself because, in response to that mischaracterization of this measure, which we hear time and again, I have noted the experience and politics of the people administering the program. We have the Under Secretary in charge of technology, who was a Reagan appointee, in charge of the Board of Directors of the National Science Foundation. We have Arati Prabhakar, brought over from DARPA into the Commerce Department, an appointee by both Reagan and Bush. She is the Administrator of the National Institute of Standards and Technology.

Then opponents of the bill argued that S. 4 involves a lot of money.

I could read the RECORD here about burning holes in the pocket, about how we are going to throw money at California. That is a very treacherous kind of reference on this particular bill. Then when the distinguished Senator started off, and I knew he had admonished me with respect to the matter of peer review. We had expressly provided for peer review by the National Academy of Engineering, and we defended that requirement on the House side. We have been appropriating for this measure for the last 3 years.

Then he said, well, this is a new philosophy, new philosophy, and with his prestige and dignity, when he stands up he gets the attention. It is a very treacherous and dangerous thing to talk about a new philosophy and a new approach with regard to industrial policy in the light of this RECORD.

So I cite that RECORD. I go down, and I say here was a Senator leading the way for industrial policy with respect to the semiconductor industry. A year ago he put in a bill as the principal author. What does he say on that bill?

> Federal financial assistance to the semiconductor industry consortium, known as Sematech, has been successful in improving the competitiveness of the U.S. semiconductor industry.

He cites that successful example to justify a similar assistance for the aircraft industry. I read from the following paragraph:

> Such a government industry consortium should focus its efforts on research, development and commercialization of new aeronautical technologies and related manufacturing technologies as well as the transfer and conversion of aeronautical technologies developed for national security purposes to commercial applications for large civil aircraft.

So I am sitting there saying, "Wait a minute. He has been leading on this philosophy, and he is talking about the transfer of technologies from defense to commercial purposes." And then I go of course to the report of the Republican Task Force on Defense Conversion. He is a member of it. Let me quote from it:

> The task force endorses two programs of the National Institute of Standards and Technology as important to the effort to promote technology transfer to allow defense industries to convert to civilian activities. These programs are the Manufacturing Technology Program and the Advanced Technology Program.

That endorsement was back in June 1992, almost 2 years ago. So how can we now be alleging a new philosophy, a new departure, when the program was endorsed 2 years ago?

This bill was supported in the committee, unanimously voted out, and as ranking member helped to get it cleared on the floor, but time did not allow for final passage; it was not adopted, so we put the bill back up again, and the amounts are in there, and it comes back. And what we are doing in S. 4 is this: We are following chapter and verse the philosophy of the Republican task force on defense conversion.

So we see it there; we see the statement by the distinguished Senator from Missouri. And he says in May of last year, with respect to the Aerotech bill. That bill has a number of cosponsors, both Democrats and Republicans, and the idea of that legislation is to provide for private sector input into the spending of about $10 billion, which the Federal Government now does each year in the research and development area in aerospace. It advocates that the aerospace industry emulate the model of Sematech, to make it possible for a consortium of U.S. aerospace industries, with the support of Government, to join together in the development of new technologies in that private industry.

So we have the example of the Senator's leadership with respect to semiconductors. We have his leadership with respect to the aircraft industry.

How can we now start talking about an alleged new philosophy, when the Senator knows his record and he knows his bill and he knows the unanimous support for S. 4. For 4 days and 4 nights, their nongermane amendment after nongermane.

We started off with GATT, and we went to pesticides, and we went to post offices, and we went to recordkeeping, and economic impact statements. We are just all over the lot. I thought "monkeyshines" was a pretty polite characterization of this situation. That is why I described it that way. I have been trying my best in total frustration. When you have 4 days and 4 nights and are trying to find out what is the intent of those on the other side of the aisle. Finally, we get an inkling from the Senator from Wyoming, who said, "Wait a minute, this is not industrial policy, this is political policy led by the chairman of the Democratic Party." Then the Senator from South Carolina begins to understand the change in the rules and why they are going through this filibuster.

Specifically, as to the amount of money, that keeps coming up and keeps getting misrepresented. When we reported that bill out, it was $1.5 billion a year ago. We took it over to OMB and they said, "That is not going to stay within our budget." We cut it back to about $1.3 billion for 1 year and $1.4 billion for the other year, and that is where they get the $2.8 billion. But under the old initiation and report of the bill with amounts of $1.5 billion for one year and $1.5 billion for the next, it would have been $3 billion. I can be exact now because we debated it. The bill before us is $143 million less for fiscal 1995 than what the Senator from Missouri supported.

So here I am. They are misrepresenting the amounts and they keep coming up on that. I try to explain how, from DARPA, we have taken the programs, and I list the programs in 31 States. There are over 85 programs that we bring from Defense to Commerce. That is where we get defense conversion. I talked to too many Republican colleagues who do not understand it. They get in caucuses, and I take it they are told stories about the Democratic Party chairman and what have you. I cannot rebut that misinformation in the caucus. I try my best. The horse is out of the barn.

We had an earthquake out there. They gave $8.8 billion to California, and nobody raised the political question at that time. They gave $5.6 billion to FEMA, not to Commerce. You are all watching Mr. Brown. You better watch Mr. FEMA. If you are President and you have your man from Arkansas, you say here is what to do and when to do it. You got $5.6 billion to do it. In marked contrast, there is strict peer review under S. 4. These programs are industry initiated, not Government picking a winner. We do not pick. The California industry, at best, if I am the Secretary of Commerce, has to initiate the request. They have to come with over half of the money under the law and thereupon pass merit selection or peer review of the National Academy of Engineering.

"Monkeyshines"—maybe that was not strong enough. But you can sit here and watch all of these extraneous efforts that have no reference whatsoever to this particular measure and have the Members vote on the

amounts, when they do not understand we have taken it from Defense to Commerce, when the amount is less than what the Senator from Missouri supported, when the bill was reported. What can a Senator do trying to bring the truth out and trying to bring the facts out?

Here it is not any new philosophy, but the philosophy of the Senator from Missouri that we are following. He worked on this bill with us. The bill came out. And, in candor, he came to me at the beginning of the year and said, "I do not like what went on in Geneva in December, this matter of green lighting the subsidies." He said, "I am going to have to oppose the bill." I said, "Please do not oppose the whole bill on that. After all this has unanimous support on both sides of the aisle. There is not an industrial group that has not written in and said we are for it." He said, "Well, I am going to have to at least get the attention of the administration to see if we can get GATT amended."

Well, here is the distinguished Senator, and we are on opposite sides. I was against fast track, and he was for it. We heard those pro-fast-track arguments, such as how in the world are you going to get 114 nations back together again to deal with amendments. We do not want to have any amendments, once we get an agreement on GATT, the Uruguay round. But now, my gracious, first out of the box is an amendment by that same Senator, an amendment to a bill he supported over the last 3 years.

Inconsistency, fanciful—certainly inconsistent. I will leave it there. I appreciate the opportunity to once again talk to the colleagues on the other side of the aisle. We have been very reasonable. We tried to accept what amendments relate to the bill. But I cannot go along with, evidently, whatever the exercise is—I am afraid to use any word around here, because people take exception. But I have laid out the facts, and the RECORD is not to be changed. I said what I said and meant what I said, and I am sorry we had to say those kinds of things, but that is what the RECORD is. I have to try as manager of the bill to bring the facts to the colleagues.

Mr. DOLE. Mr. President, I listened to the distinguished majority leader, and I share part of his frustration. But if we are adding up who used most of the time, I think most of the time has been used on that side of the aisle—it may be two-to-one. We talk about the 4 days, and we ought to get a perspective. It has not all been used on this side. We had a number of Whitewater speeches over there, defending that, which is difficult to do, so it takes a long speech. All of this has been intertwined with this bill.

I think the RECORD should reflect that we have been cooperating with the majority leader. We gave him a UC this morning to take up something he mentioned to me yesterday. We also have agreed to clear an environmental bill, which is now blocked on that side of the aisle. We have been trying to accommodate the majority leader. I know how difficult it is to keep things moving.

In reference to this bill—and I am not an expert and probably could be corrected—but it started over a couple years of $280 million, and now it is $2.8 billion. It has grown a lot, about 10 times.

I do not know all the politics of it. I am not getting into all the politics of it.

But we did have a conference. We did have a discussion. We are concerned about it. It was about a year ago that they brought out this stimulus package. Democrats said we have to pass this $13 billion stimulus package to get the economy going. We did not think so.

This is sort of a ministimulus package. Many of us do not think this bill is worth passing.

We just had a big debate here on the balanced budget amendment.

A lot of colleagues who really are going to vote for this with great eagerness made great speeches on the balanced budget amendment. We said we do not need a balanced budget amendment; we have the will to hold down spending.

This is the first test since we debated the balanced budget amendment, and I do not know how many votes we are going to get on that side, but I bet I can count them on one hand or less.

If we want to go on, I know this is an authorization bill. The appropriation may be smaller. But this is a spending bill. It is 10 times larger than it was a couple years ago in the Bush administration. If that is not significant, so what is $3 billion? If it is $3 billion or $2.8 billion what is the difference? It is not much money. Someone said yesterday it was four or five times the budget of their State. I think it was Idaho. And it is probably as large as the budget of a lot of States.

I think it ought to be looked at in context. I think we are trying to cooperate. We got together a list of amendments last night.

I know how frustrating it is for the manager. I have been there. That is the Senate rule. You do not have to have a germane amendment. They are offered all the time.

In fact, we broke into the proceedings yesterday to consider a bill about an Indian tribe in Alabama, and probably should have.

So I want the RECORD to show that it had not all come from this side. We are prepared to cooperate. We are not certain you are going to get cloture. We do not like some of the things that were said by the distinguished Senator from South Carolina. Maybe they were necessary as he just indicated. We do not think so, particularly when they are directed at our friend from Missouri.

So we are ready to go. We told the majority leader we have three votes, three amendments lined up. We have two other amendments. I hope they are fairly related to the bill. I am not certain. One is on OSHA, which is not closely related. But the other was on business documents, or something, that might be related.

I want to assure the majority leader we will continue to cooperate as we did yesterday, as we did this morning, and we hope that we can make some changes in this bill and pass it.

But if changes are not going to be made, then we have to do what we think we have to do. We had a conference. We have taken a party position. I hope we can sustain that position.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I would just like to comment to begin with that my friend from Missouri needs no one to defend him. His record of service, his standards of integrity, his straightforward dealings with all colleagues on both sides of the aisle require no elaboration by this Senator.

But I want to make it clear that in the brief 8 years that I have been here I have never known the Senator from Missouri to engage in monkeyshines, or engage in any devious activity of any kind.

I have always known the Senator from Missouri to be frankly a moral compass for many of us who appreciate his fundamental belief in fairness and his fundamental philosophy that has been, I think, an example for all Senators.

I hope that the Senator from South Carolina recognizes that when he levels criticism at the Senator from Missouri and brings up past records or past sponsorship of bills or statements that he has made, some of us find it disturbing because of the very high regard with which we hold the Senator from Missouri.

As I say that, I understand and appreciate the deep frustrations that the Senator from South Carolina has about the lack of progress on a piece of legislation about which he feels passionately and fiercely. I certainly do not envy his position, having spent, as he so well described, 4 days and 4 nights attempting to get this legislation passed.

At the same time, I hope the Senator from South Carolina recognizes that the Senator from Pennsylvania, in fact all 43 other Members on this side, holds the Senator from Missouri in the highest respect and admiration and, of course, are not pleased when we hear what was described as monkeyshines on his part.

Mr. President, in keeping with the admonition of the majority leader, I ask unanimous consent to address the Senate for 10 minutes as if in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

WHITEWATER

Mr. MCCAIN. Mr. President, the reason I say I respect the admonition of the majority leader is that I intend to speak on the issue of Whitewater, and I did note that both the majority leader, the assistant majority leader, and other Senators, during the course of consideration of this legislation, have come to the floor to speak on the Whitewater issue. That is why I do not have any conscience pangs about doing so.

I speak from a special perspective, Mr. President, as one who underwent an Ethics Committee investigation by this body where proceedings went on, including televised hearings, while at the same time the subject of the accusation, Mr. Charles Keating by name, was undergoing investigation and prosecution. It certainly did not impede the process of the Ethics Committee investigation of me and four of my colleagues at that time.

I just use that as an example of a special relationship I have with this kind of issue.

I would note that during the Reagan and Bush administrations there were at least 30 hearings of investigations of alleged improprieties by administration officials or their family members. Some of these persons were being investigated by a special prosecutor as well. During this time there were also a number of congressional hearings involving matters that were also the subject of ongoing criminal investigations.

My colleagues on the other side of the aisle seemed undeterred from going forward then. At that time the good of the Nation was at stake. Now, somehow, calls for public disclosures smell of politics.

It is certainly true that hasty and ill-conceived congressional hearings could adversely affect Mr. Fiske's criminal investigation, and he would prefer the Congress not to hold hearings. I respect Mr. Fiske's views and share his concerns, but I also believe they can be readily addressed.

In fact, no Republican Member of this body has suggested that we take any action that would unduly interfere with the special prosecutor investigation.

Senator D'AMATO and Senator COHEN met with Mr. Fiske and stated categorically that the Republicans did not intend to grant immunity, as was the case with the botched Iran-Contra hearings. Moreover, they have emphasized that Republicans were more than willing to wait to obtain testimony from witnesses until after Mr. Fiske and his staff had taken testimony from them so as not to color their appearance before a grand jury in any way.

Finally, they made it clear that Congress would work with the special prosecutor to ensure that witnesses that should not publicly testify before Congress would not be called.

I think it should also be noted, however, that the Supreme Court, in Hutcheson versus United States, specifically contemplated that a congressional inquiry and a criminal investigation into the same matter could coexist.

I am confident that we will be able to structure oversight hearings that will help uncover the facts that the American people are entitled to know, without imperiling Mr. Fiske's investigation. Indeed, I would submit that carefully structured hearings will almost certainly enhance the ability of the special prosecutor to complete his assigned task. As all America now knows, the information regarding meetings between the White House officials and regulatory officials came to light only after questioning by Members of the Senate in a committee hearing. These disclosures directly led to the issuance by Mr. Fiske of subpoenas to a number of administration officials. The additional sunlight shown on this issue by congressional hearings will augment Mr. Fiske's limited resources.

Mr. President, while the integrity of Mr. Fiske's investigation is crucial, and we will do everything to ensure that integrity, there is a much more fundamental issue at stake. The issue of overriding importance in this matter is Congress' responsibility to the American people and to inform the public about the operation of their Government.

Mr. Fiske has a relatively narrow mandate—to investigate and determine whether there has been any criminal wrongdoing—not to determine whether Government officials are abusing the public trust or acting in an unethical manner. Yes, we should let him do his job—find out whether anyone has committed a crime.

But Congress is concerned—must be concerned—about much more than criminal conduct. It is Congress' responsibility to ensure that elected and appointed public servants in Government are adhering to the highest standards of integrity and upholding the public trust. Ultimately, our constitutional democracy rests on a fragile foundation of public faith and trust in the institutions of Government.

Are we to sit idly by, as apparently some of my colleagues want, and wait for Mr. Fiske to complete his investigation of criminal misconduct—which could take many months—when there are already serious allegations of ethical misconduct, something that Mr. Fiske has no jurisdiction over?

Are the American people well served by allowing individuals who may have abused the public trust to go unquestioned for a period of months or even years? Of course not. So, while Mr. Fiske does his job, we must do ours.

Although some of my colleagues might hope that it were otherwise, there is ample historical, legal, and constitutional justification for Congress to hold investigative hearings in just these kinds of circumstances and inform the public as to the true facts involved.

Sam Dash, the eminent legal scholar and former Watergate prosecutor, made exactly this point yesterday morning on one of the network shows. When asked about the propriety of Congress holding hearings on Whitewater he responded, and I quote:

Well, I'm not sure they're necessary at the time unless the Congress feels that they need facts, one, to see if their present laws are working well or if they need new laws, and, again, Congress has a very important constitutional function that the Supreme Court has held, and that is to keep the public informed.

We have a democracy. The ultimate sovereign is the people. And Congress is the agency that is given the power and the right and the duty to inform the public on how the Government is working, how the executive branch is working.

So I see no problem, by the way, in Congress holding hearings. I think it was a reasonable request on the special counsel's part, and I think Senator D'Amato and the other members of Congress have acted responsibly.

More importantly, this is also the view held by the highest Court in the land. In a seminal case involving the investigations of the House Committee on Un-American Activities, Watkins versus United States, the esteemed Chief Earl Warren wrote on behalf of the Supreme Court:

The public is, of course, entitled to be informed concerning the workings of its government.

Woodrow Wilson, in his book "Congressional Government," put it most succinctly, when he wrote:

The informing function of Congress should be preferred even to its legisaltive function.

Mr. President, I would like to quote from another statement that I believe is relevant to this issue. It was made by the now Vice President, then Senator from Tennessee, almost 3 years ago concerning the October Surprise matter. The Vice President said:

The evidence which has thus far trickled into the public domain is still fragmentary. Much of it is circumstantial, but it is compelling. If the allegations are not true, the country needs to know they are not true. If they are true, the country needs to know that as well.

I believe the air needs to be cleared. So, I am today calling for a formal investigation of these charges and allegations without prejudging what that investigation might find, but believing deeply that it needs to take place in order to establish the truth or falsehood of the allegations that have been made.

These words were spoken by our former colleague, the Vice President, on the floor of the Senate almost 3 years ago, when Democrats were clamoring for a congressional investigation into the so-called October Surprise matter. They are just as relevant today.

I might remind my colleagues, there was clearly no basis for any hearing on the October Surprise.

Mr. President, Republicans did not place a cloud over the administration—the administration did that themselves. Calling efforts to resolve that cloud by getting the facts out to the public in a timely fashion political partisanship is the height of hypocrisy by some and a copout by others. I would also note that it is not just Republicans that believe congressional hearings are appropriate, but virtually every newspaper editorial board in the country.

It was the New York Times which opined on the slovenly ethics of the administration. It was the New Republic, hardly a bastion of Republican defenders, which said that "the current strategy of slow-motion revelation—'let the special counsel do its job'—hardly serves the interests of the administration."

Mr. President, in today's Washington Post there is a very interesting article by Mr. Krauthammer. I quote from his article.

> Republicans are now demanding Whitewater hearings. The Democrats, having seen how much damage was done in half a day, continue to stonewall. This is the same party that in 1990 had the House Banking Committee spend two days in public hearings on Neil Bush's involvement in the collapsed Silverado S&L. At the time, Democrats were gleeful about making Bush the "S&L poster boy." Now that the S&L poster girl might turn out to be named Clinton, they express deep concern about the partisanship of such hearings.
>
> This is the same party that bathed the country in Iran-Contra hearings. That put every syllable of Anita Hill's charges against Clarence Thomas on national TV. That even saw fit to hold hearings on a total fiction, the so-called October Surprise.

Mr. President, Mr. Krauthammer goes on to say:

> The prosecutor's interest is prosecution. The public interest is disclosure. The prosecutor tries to find breaches of law. The public needs to know about breaches of trust. The public's interest in Whitewater is not, say, to see Hillary Clinton or her Rose law partners on trial. It is to find out simply what happened.

Mr. President, I suggest that we are nearing a point in the history of this country where hearings are called for if simply only to get on with the business of Government.

All Americans agree that we have serious and crucial issues that we have to face. And if we are in a perilous situation where the bleeding does not stop and we are treated on a daily basis to new and titillating allegations in the media, we need to have these hearings in order to get the business of Government back on track again.

Mr. President, I appreciate the indulgence of my colleagues. I yield back the remainder of my time, and I yield the floor.

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KERREY). The clerk will call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AIRBUS

Mr. DANFORTH. Mr. President, I would like to address the Senate on the question of the aerospace industry and particularly the matter of Airbus, because the Airbus situation has been so egregious and such a clear example of unfair trade practices against a major industry in the United States.

The aerospace industry has truly been one of the flagship industries of our country. The aerospace industry has been one of the leaders with respect to export sales by the United States. We have been the premier aerospace manufacturer, and the only real competitor in the manufacture of commercial aircraft has been Airbus.

Airbus is a consortium of European countries that have created a company, the Airbus company, Airbus industry, which has gotten into the business of commercial aircraft. It has gotten into the business of commercial aircraft with very, very heavy subsidies, production subsidies, research subsidies, development subsidies.

As a matter of fact, the Airbus industry in its history—which I believe is certainly several decades old now, something like three decades—the Airbus industry has never made a profit.

No private business can succeed without making a profit. No private business can stay alive without making a profit.

The Airbus industry has never ever made a profit, but Airbus industry has been very heavily subsidized by European governments, subsidized, as of 1990 or 1991, whenever the latest computation I have seen was made, subsidized to the tune of $26 billion. And, as a result of those subsidies, the Airbus industry, which has never made a profit, has captured approximately one-third of the market in commercial aircraft.

This, in turn, has had a very dramatic effect on the U.S. aircraft manufacturing companies, and there are two major ones, Boeing and McDonnell Douglas. McDonnell Douglas, of course, is headquartered in St. Louis, although most, if not all, of the work on commercial aircraft is not done in St. Louis but is done in California.

In any event, it has been very tough on the American commercial aircraft industry. From time to time, there have been discussions and speculation, and I believe even possibly negotiations between U.S. aircraft manufacturers and Airbus. If we cannot beat them, maybe we should join them; maybe we should have some sort of relationship with them.

Also, there have been efforts to sell in the European market, and because of the relationship between Airbus and the governments of the European countries, and between the governments and the airlines of the European countries, there has been some reluctance on the part of our aerospace industry to press, as far as they might have, the countervailing duty statute that would otherwise be available to counteract subsidies.

So against all of that background, a special agreement was negotiated between the United States and the European Community with respect to the subsidies of Airbus for the manufacturing of aircraft. And that special agreement green-lighted or permitted certain subsidies to continue. I thought that agreement was a very bad precedent. I thought that it was bad enough that Airbus was conducting all of these subsidies, but that it was even worse to officially recognize and condone the existence of the subsidies. So I felt very, very strongly about the Airbus agreement that was reached between the United States and the European Community.

In response to that negotiation, I took the position that, well, the United States now has to decide what it wants to do. My preferred response was that, despite the agreement, we initiate a countervailing duty case against Airbus.

A countervailing duty case can be initiated either by the affected industry or it can be initiated by the Government of our country. And because, under our Constitution, matters pertaining to foreign commerce are within the powers of the legislative branch of our Government, I believe that the thing to do is the legislative branch should speak out and mandate the initiation of a countervailing duty case against Airbus. I still believe that would have been the preferred course.

But I recognize that if we are not going to have a countervailing duty case and we are faced with foreign subsidies, with foreign unfair trade practices, the United States has only two options available to it. One option is to lose out and the other option is to meet subsidy with subsidy.

The idea of meeting subsidy with subsidy is not something that I prefer. It is not something that I think is good policy. It is not something that I would like to welcome. But when it comes to a question of necessity, if we are not going to use the remedies under the

trade laws, if we are not going to bring countervailing duty cases, then it seems to me that what we should do is to get into the subsidy business ourselves, or at least open up that possibility.

So after the agreement was reached between the United States and the European Community, I introduced two bills. They were meant to be bills in the alternative. One bill was to compel the initiation of a countervailing duty case against Airbus. And the second bill was to form our own consortium, which would be called Aerotech. It was modeled after Sematech. Sematech was, itself, a U.S. response to unfair trade practices abroad.

I am not a fan of subsidies. I do think that there are times, especially when whole industries are going down the drain, like Chrysler, or times when other countries are doing something, when we have to react in some fashion, that the purity of a philosophical position is abandoned in the face of necessity.

That is the origin of my position with respect to Aerotech and my position with respect to Airbus.

Now, I am very concerned that what has been a singular case in the aerospace industry is going to become the model for the future. That is my concern. I think it is going to be the model for the future because under the trade agreement that has been negotiated between the United States and the rest of the world, we have agreed to the greenlighting of major subsidies for research and development—50 percent of development, 75 percent of research—which combines both basic research and applied research. This is a major change in U.S. trade policy and a major change in the subsidies code.

My fear is—and I hope I am wrong—that Airbus is going to be something of a model; what was done with Airbus and the Europeans is now going to be permitted. And it is not going to be a matter, anymore, of having a countervailing duties remedy and not using it; the remedy will not even be available. We will, in effect, have condoned and agreed to a system of subsidies which I believe is a very, very serious matter.

What has particularly concerned me is that the change in the position of our Government with respect to subsidies has been the moving force in achieving this change in the subsidies code. The change in the subsidies code and the green-lighting of certain subsidies has not been foisted upon the United States by the negotiating power of other countries. Instead, it has been something that has been advanced by our own Government as a matter of policy. I just think it is a serious policy and I think it deserves attention. And to the extent possible, it has to be remedied.

S. 4 is a major increase in Government subsidies for our private sector for research and development. It is a very dramatic increase in the so-called ATP Program, Advanced Technology Program, from $199 million to an authorization—which is this year—to an authorization of $575 million for 1996. This is a program which was zero about 4 years ago. There was not any such thing. It was zero. And it had a big burst forward just in this year to $199 million. It was way below that before. I do not have the numbers with me. They are somewhere in the back of the Chamber.

But in any event, it has gone from zero to $199 million in a few years, and now we are authorizing the ATP Program to go up to $575 million. That is a big change. And this is a program to provide direct subsidies to selected R&D companies.

Then we have something called the SBA Pilot Program. This is a program by which the Department of Commerce and the Small Business Administration licenses venture capital companies and then makes $50 million in 1995 and $50 million in 1996 available to venture capital companies for the purpose of who knows what.

It is a Government initiative into venture capital. I have attempted to point out the problem with the Government getting into venture capital is that there really is not any risk. Venture capitalists put a lot at risk. Venture capitalists can win or venture capitalists can lose their shirts, and there is a certain discipline that is imposed by knowing you are going to lose money. One thing you can do is you can pull the plug on a program that is not going very well. Government, when it is backing a program, does not like to pull the plug. Why? Because there are constituents out there; hey, there are real voters out there who are dependent on the subsidy.

So that is the so-called SBA pilot program. It is a venture capital program.

In a nutshell, Mr. President, I am concerned that Airbus is going to be the wave of the future. I am concerned that Airbus is something that is going to be practiced by our trading partners, or the Airbus scheme is going to be practiced by our trading partners in all kinds of very promising industries. I do not know what they are: High-definition television, pharmaceuticals, whatever. Some of the most promising future-oriented industries will be involved in some kind of a race worldwide on what governments are going to provide the greatest subsidies.

I am concerned that S. 4 dovetails with that problem in that it provides a substantial increase in funds and a substantial change in policy with respect to the Government entanglement with the private sector.

That is the nature of my concern, but I did want to speak with the Senate about the question of Airbus and the question of the so-called Aerotech proposal because it has been repeatedly mentioned on the other side of the aisle, countless times, really. I believed that it was important to clear that up.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I was trying to listen to two at one time. The 1994 figure, this fiscal year, is $526 million. We added thereto $50 million for the small business technology loans. That was worked out with Chairman BUMPERS, the chairman of the committee; it was worked out by the ranking member, Senator PRESSLER, who is also top ranking on our Committee of Commerce. That is one add-on.

I am trying to get an explanation and an understanding why we got up to the higher figure because we hear we have come from nothing to $2.8 billion. Let us talk in terms of years. When you say $2.8 billion, you are really going to 2 years rather than 1 year. What I want to do is take the 1 year and show how we proceeded.

We did not come from nothing to $2.8 billion. By the way, the Competitiveness Council said you ought to go up from $4 to $8 billion. That was their recommendation last year and again this year because we are transferring all of this from DARPA to Commerce, and, yes, there is an increase from $199 to $475 million, not $109 million and $575 million respectively out in 1996.

We can only talk in one vocabulary and one understanding, and I am talking about where we are in this fiscal year, right this minute, already signed into law and where we are going next year. The references to where President Bush was, it is a given President Bush tried to redline this one. He absolutely opposed it, and the only way we got it signed into law back at that time by President Reagan was on a trade bill where he would have had to veto the entire trade bill.

So they have been shouting industrial policy at us for quite a while whenever they really resist going in to try to develop jobs, to try to develop our technology, and to become competitive. There is no question about that. Do not use those figures; let us use the figure we have right now that the Congress approved—well, I daresay, I guess we will have to admit it—without a single Republican vote. Yes, we had to. We had to get all of the Democrats almost, plus the Vice President to get this amount. My memory is jarred. The economy is doing good on account of the budget that we passed last year that the distinguished Chair

and I finally voted for. We had grave misgivings, but we had to get the country moving and it is moving.

With respect then to the 1994 figure, $526 million, the small business loans worked out to $50 million. I alluded to the fact that we had the advance technology programs go from $199 to $475 million, not $575 million 2 years out, but next year, $475 million. That is where instead of seven technology centers, we are going to try to add another seven centers and ultimately get more. We had testimony before concerning the business leadership, the Competitiveness Council before the Committee of Commerce 2 years ago. They said we ought to have 70 centers. On the centers, we only go from $30 million up to $70 million. So there is an increase there of $40 million.

All right. Summing up, again, we have the small business at $50 million; we have the advance technology programs being increased by $258 million; we have the centers at $40 million. The laboratory itself goes up $94 million. There has been some construction and, again, on that same construction contract almost $100 million added there.

With respect to the National Science Foundation, that is an add-on of $75 million. It is not in there this year.

They can go from zero to all of this. Yes, President Clinton's program in the light of $70 billion being used for research and health research and $40 billion in defense research and energy research of over $6.8 billion and these other things with the national labs. We are trying to get more into the private sector and under the National Science Foundation, so we add there another—National Science Foundation—$75 million.

The information superhighway of Vice President GORE goes up $209 million, and the manufacturing technology centers, $48 million. So you can see at a glance that we have added up now, instead of the $526 million, we are already to $1.2 billion. The amount overall is $1.3 billion. There is a little bit in there for the wind tunnel. There is a small increase here, there and yon. It is not just we have a zero program and let us go to $2.8 billion and start spending $3 billion without thought and without support and without bipartisan support.

Now, bipartisan support, once again—and we have been doing this 5 days this week—our Republicans colleagues and Democratic colleagues all on the Committee of Commerce reported out unanimously $1.5 billion for 1 year, or if it stayed the same as a freeze, it would be $3 billion, not $2.8 billion, for the $2.8 billion figure comparable. They continue to jump and make it just way out of line and keep talking about the amounts. So they jump it up to $2.8 billion from nothing. Only 10 times nothing is 10 times. Absolutely, I know. That is not the case at all. We have not come with 10 times. We have taken over programs from DARPA. We continue to explain it and it is less, Mr. President, than what the distinguished Senator from Missouri supported when we reported this bill last June.

That is on the figures.

With respect to the aerospace industry, because therein is where I see that I have agreed with the Senator from Missouri on philosophy. We have the letter on the GATT agreement—it is addressed to each one of us; we each have a copy—from the Assistant to the President for Science and Technology, J.H. Gibbons who was confirmed unanimously, incidentally, the former Director of our Office of Technology Assessment.

I worked on that particular board since its commencement back in the seventies with Senator KENNEDY and Senator Humphrey. We got together and instituted it, and I guess I am the remaining old-timer still on the Office of Technology Assessment. There has been nothing more of a delight than working with the expertise of John H. Gibbons, and Jack, as we call him, writes this letter from the White House dated March 7—

I am writing to express my full support for the GATT agreement that has emerged from 8 years of international negotiations in the Uruguay round. It is an excellent document that will promote freer and fairer trade and enrich the nations of the world including our own. I am particularly pleased with the outcome of the subsidies code in the GATT agreement.

Let me read that again for the attention of the Members—

I am particularly pleased with the outcome of the subsidies code in the GATT agreement. It puts real teeth in disciplining unfair trade distorting production and export subsidies. At the same time, it protects economically desirable U.S. Government investment in research and development from potential challenge by foreign countries.

I applaud the successful efforts by our trade negotiators in Geneva to improve the language in the subsidies code relating to government research and development investments. The agreement as negotiated protects from challenge or threat U.S. Government programs that have long had widespread bipartisan support. Among them are—

And he goes down a list here but the important one addressing the particular subject addressed by the distinguished Senator from Missouri is, and I quote, "Support for aeronautical and space research dating back to 1915 for aeronautics from NASA."

Mr. President, I ask unanimous consent the letter in its entirety be printed in the RECORD.

There being no objection, the letter us ordered to be printed in the Record, as follows:

THE WHITE HOUSE,
Washington, DC, March 7, 1994.

Senator GEORGE J. MITCHELL,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MITCHELL: I am writing to express my full support for the GATT agreement that has emerged from eight years' international negotiations in the Uruguay Round. It is an excellent document that will promote freer and fairer trade, and enrich the nations of the world, including our own.

I am particularly pleased with the outcome of the subsidies code in the GATT agreement. It puts real teeth in disciplining unfair, trade-distorting production and export subsidies. At the same time, it protects economically desirable U.S. Government investment in research and development from potential challenge by foreign countries.

I applaud the successful efforts by our trade negotiators in Geneva to improve the language in the subsidies code relating to government research and development investments. The agreement as negotiated protects from challenge or threat U.S. Government programs that have long had widespread bipartisan support. Among them are:

Research at the National Institutes of Health that leads to commercial pharmaceutical or biotechnology products;

Support for aeronautical and space research (dating back to 1915 for aeronautics) from NASA;

Sematech, the government-industry consortium to improve semiconductor manufacturing technology that is widely credited with helping to restore the U.S. industry's position as world leader;

The Technology Reinvestment Program, a cornerstone of our defense conversion program;

The Commerce Department's Advanced Technology Program, designed to promote the growth of knowledge-intensive, wealth-creating industries that generate good new jobs;

The thousands of Cooperative Research and Development Agreements that industry has signed with our National Laboratories, to turn government research into technologically advanced commercial products.

We must not put these excellent programs in jeopardy.

I am proud and grateful that our trade negotiators achieved an agreement that reflects American values and the American approach to R&D partnerships between industry and government, while putting the brakes on free-for-all subsidies.

With kindest regards,

JOHN H. GIBBONS,
Assistant to the President for Science and Technology.

Mr. HOLLINGS. I thank the Chair. The concluding paragraph:

I am proud and grateful that our trade negotiators achieved an agreement that reflects American values and the American approach to R&D partnerships between industry and Government while putting the brakes on free-for-all subsidies.

With kindest regards,

JACK.

He just sent that here the beginning of the week.

So, yes, there is a difference on the subsidies with respect to the distinguished Senator from Missouri and the White House and the administration. The White House is saying, the administration is saying, look, we think that the subsidies code in GATT puts real teeth into unfair trade distorting production and export subsidies and protects what we have been doing.

I read that specifically:

It protects economically desirable U.S. Government investment in research and de-

velopment from potential challenge by foreign countries.

Now what happens? Let us bring us right up to date. Bringing us right up to date, Mr. President, with respect to those subsidies which have potential challenge from foreign countries, we find that there is such a one right in the aerospace industry that was not referred to, as I remember, by the distinguished Senator's comments, but that is the recent sale on February 16, Mr. President, of 6 billion dollars' worth of commercial aircraft to Saudi Arabia from United States manufacturers to replace its civilian fleet of about 50 airplanes. Now, Airbus, the four-nation European aircraft manufacturer, was quite surprised, and it goes on. I am not reading the entire amount, but it says:

The consortium, made up of France, Germany, Spain and the United Kingdom, is looking at the possibility that the order was linked to the rescheduling of $9.2 billion in Saudi debt for U.S. defense equipment which would mean it violated article 4 of the GATT code. The official said article 4 bans inducements related to defense supplies.

The Senator from South Carolina knows not the truth or falsity of that particular provision of the code, but you can see the concern, because it goes on to state:

The transaction was facilitated by $6.2 billion in export financing provided by the Export-Import Bank, an independent government agency that helps finance and promote exports sales of U.S. goods and services.

Now, Mr. President, there is a dispute. There is a dispute as to what is contained in the Uruguay round, the subsidies code, and whether or not it is good or bad. There is a definite difference. S. 4 does not deal with that except for the fact by way of allusion we can say we provided that our particular program is not subsidized in the context of cash money for the actual sale from Export-Import Bank, does not subsidize in the amounts otherwise for any forgiveness of any debt of that kind. We do not deal with any $9 billion. They talk about this bill here just to get all of America's technology going, and they use the 2-year figure but the 1-year figure is $1.3 billion. Yet they have no misgiving about using $9 billion to be rescheduled. They prefer to refer to this bill as an exorbitant thing for all of industry. The latter is exactly the point: It is for all of industry, not the aircraft technology.

Now, we have all agreed—and the distinguished Senator said he believed in Chrysler. He believed in semiconductor. And he says if you are not going to have countervailing duties, he believes in aerospace subsidies. So we know of those things. So we know when we look and say we put it in, in nominal peer reviewed amounts, instituted by industry and not government, we know we are really being on the conservative side of this particular approach, both of them being industrial policy. This is an industrial policy that we all should support, and I say so with pride.

What happens here is the Senator referred, of course, to Airbus and how the production, research, and development was subsidized, they never made a profit, and as a result they have got a third of the market. I know the feeling. I have been in a similar situation with respect to the textile industry. I remember attesting back in the 1950's before the old International Tariff Commission when we were alarmed in that the consumption of clothing and textiles in America was represented in 10 percent imports of its consumption, and that if we did not do something at that time, it could double to maybe 20 percent, and that was just going to be devastating.

Mr. President, not one-third of the market, two-thirds of the clothing within the view of this audience and in this Chamber is imported. We have lost two-thirds of the market and more of the apparel, and this is the employer of women and minorities. The largest employer of women and minorities in America is U.S. textiles.

Moreover, the GATT agreement—now the Senator from Missouri and I come back in lockstep with respect to opposing GATT. And I would like to see it renegotiated. They would not even let us in the door in Geneva. We had representatives there. We had letters of promise of what they intended to do. But what they did, namely the phaseout of what we called the multifiber arrangement, has been studied by Wharton. And the Wharton School says we are going to lose 1.3 million jobs for that phaseout. So we know this has been studied. It has been contested. As a result of the contest, we have been promised, and the promise has been broken. We are on course now with this GATT to lose 1.3 million jobs.

If the distinguished Senator can get aerospace subsidies and Airbus renegotiated, I am giving notice right now that I am going to join on and try to get the devastation of my textile industry repaired.

By the way, let me emphasize this. They had a hearing on this Tuesday. My distinguished ranking member said that he had to be off the floor as a member of the Finance Committee, and he attended that hearing. The Finance Committee brought up GATT. They brought up the matter of subsidies, and the head of Boeing Aircraft which supported that subsidy, supported the GATT agreement.

I am also told that both McDonnell Douglas and Boeing oppose bringing a countervailing duty. I read from the Council on Competitiveness in June of last year. It states on page 36, and I am just taking this up by advice of counsel:

There has been industry and government consensus behind the pursuit of a negotiated solution to the trade-distorting effects of Airbus subsidies. There has, however, been little consensus behind the aggressive use of U.S. trade law to counter these subsidies. The gap between the tough talk on Airbus and the lack of trade action against it has at times been glaring.

In December 1985 and in February 1987, U.S. trade officials prepared section 301 cases against Airbus for Cabinet-level decision. Both times no decisive trade action was taken. The 1985 decision even followed a highly publicized Presidential speech, and section 301 was supported. An Airbus subsidy was singled out as a violation of trade agreements. Countervailing duty investigations were also considered several times from 1978 through 1992, and not one was initiated. A likely consequence of that inconsistency was the weakening of the credibility of the U.S. trade policy.

In lieu of trade action, negotiated solutions were sought with the objective of limiting the trade distortions associated with Airbus subsidies.

Three factors block U.S. industry-government consensus on trade action against Airbus. One, the desire of U.S. airlines for access to subsidize cheaper Airbus products; two, U.S. government's linking of trade policy goals to foreign policy priorities; three, concern of U.S. and aircraft parts producers over jeopardizing relations with their European airline customers.

In 1978, Eastern Airlines strongly opposed the Treasury Department self-initiated CBD case against Airbus. No action was taken. In 1985 the State Department blocked trade action on the grounds that it would damage U.S.-West European relations, particularly U.S.-French ties. And in 1987 McDonnell Douglas opposed Section 301 action out of fear that retaliation by Airbus governments would cost it important European airline customers.

Consequently, the action was dropped. Government officials were unwilling to take trade measures opposed by the U.S. industry, lacking full industry support and sometimes inter-government consensus. Trade policy was paralyzed.

I had a similar experience, Mr. President, with the automobile industry. I will never forget the excitement in the early part of the year when we had the three big auto companies coming here, the heads of General Motors, Ford, and Chrysler. They were going to appear for the first time before the committee. I heard a couple of days before the hearing that they intended to come and support a dumping case, initiating a joining of hands, initiating a dumping case. We know over 2 years ago—and I am just citing from memory with round figures—that the Japanese automobile industry lost about $3.2 billion on overseas sales, but back home in the domestic market they made it up with $11.1 billion in profits.

So there is an assault. Do not ask about losing any money, as has been pointed out by Airbus and not making any money. The strategy with Airbus is market share. The strategy with Japanese is market share.

We are not going to turn to that strategy here in the United States and put in a MITI and put in an Airbus and start subsidizing. But we have to do something to boost the commercializa-

tion of our technology, and that is what S. 4 is all about.

So there we are. We are back on S. 4 now. We have heard about the aerospace, and there is one point of agreement: the legitimacy of a philosophy that supports industry. That is the philosophy we have in this particular bill. We ought to assist with the research, definitely do that. That is the bare minimum, and we have been doing that over the years. We have done it in agriculture. That is the land grant colleges. The distinguished Senator knows agriculture better than any. And we at the land grant colleges conducted the research with Federal grants. We had the experimental stations to put new ideas to the test. Then we had the extension centers to conduct outreach.

This is exactly what we have now for industry, and particularly small business industry on the industrial side, on the technology side, on the production side.

These programs are industry initiative and largely industry financed, with the National Academy of Engineering conducting peer review. We go about it in that very deliberate fashion and in a very modest way. I cannot find a business entity that opposes this. All of them have written in, all the coalitions: National Association of Manufacturers, the Competitive Technology Coalition, and all the others. So we have a good measure.

If we can move forward, I want to yield to see if we can get some amendments up and get some votes.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BROWN. Mr. President, I have heard the chairman. I respond.

Mr. President, I rise to send an amendment to the desk, but I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1496

(Purpose: To amend rule 11 of the Federal Rules of Civil Procedure)

Mr. BROWN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 1496.

Mr. BROWN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new title:

TITLE —FEDERAL RULES OF CIVIL PROCEDURE

SEC. . RULE 11 FEDERAL RULES OF CIVIL PROCEDURE.

(a) IN GENERAL.—Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subsection (b)(3) by striking out "or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery" and inserting "or are well grounded in fact"; and

(2) in subsection (c)—

(A) in the first sentence by striking out "may, subject to the conditions stated below," and inserting in lieu thereof "shall";

(B) in paragraph (2) by striking out the first and second sentences and inserting in lieu thereof "A sanction imposed for violation of this rule may consist of reasonable attorneys' fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party."; and

(C) in paragraph (2)(A) by inserting before the period ", although such sanctions may be awarded against a party's attorneys".

(b) EFFECTIVE DATE.—The provisions of this section shall take effect 30 days after the date of the enactment of this Act.

Mr. BROWN. Mr. President, I know this bill has become somewhat controversial, that strong words have been exchanged. But I want to pay my respects to the distinguished work of the two Senators who are on the floor right now, the distinguished chairman who has brought this forward and the distinguished Senator from Missouri, who has worked so hard and long on this bill.

I know that both of them are genuinely and sincerely committed to improving the competitiveness of this country. I particularly appreciate the commitment of the chairman of the committee to work toward that end. While we may have some disagreements as to the funding level of this measure, I have no doubt that his purpose is sincere and that his commitment is to making this Nation much more competitive and to improving job opportunities for Americans.

Mr. President, in that regard, I want to offer an amendment to the Chamber that I hope will merit inclusion in the bill. It is one that I think deals with the fundamental question of competitiveness. Included in all of the factors that go to our competitiveness is the question of what has happened to our legal system and the potential for frivolous lawsuits.

In that regard, there has recently been a change in the rules of Federal Rules of Civil Procedure that I believe has a major impact on the potential competitiveness of this Nation. Those Rules of Civil Procedure were recently amended. I know many Members are familiar with the change. For those who are not, I might outline very briefly what has happened.

The Judicial Conference of the United States recommended to the Supreme Court that some changes to the Federal Rules of Civil Procedure be made. Their advisory committee has come up with some suggestions, many of them by trial attorneys that deal in this area, many of them by judges. Those changes have been accepted in a process that I will outline later. Many of the changes to the Federal Rules of Civil Procedure are very good and, I think, will help in the judicial process. But one particular set of changes I think presents an enormous problem for our country. And I feel that the overwhelming Members of this Chamber will be concerned about changes in the rules and will want to make some modifications in those changes in the rules.

What we are literally talking about is a change in the Rules of Civil Procedure—specifically, those changes to rule 11. We are particularly concerned about the changes in rule 11 that address the sanctions imposed for filing frivolous lawsuits. These are lawsuits that are brought without a solid basis in fact, or a solid basis in law.

In the past under rule 11, when those claims, those cases, those representations are made, we had an ability to bring meaningful sanctions against the party. The thinking was—and I believe it is valid—that bringing sanctions against a party who brings a groundless claim, one, discourages people from cluttering up our courts with those groundless claims and, two, provides appropriate compensation to the injured party. That is, if someone has a groundless claim made against them and they are injured not only by that, but by the attorney's costs, and other fees to defend themselves, they are entitled to some reasonable form of compensation.

I believe that not only do the Members of this Chamber feel that is fair, but the vast majority of American people feel that is fair. Frankly, Mr. President, this amendment only deal with a portion of the rule 11 changes regarding sanctions.

The December 1 changes to rule 11 were submitted to the Supreme Court, and the Supreme Court referred them on to Congress.

Let me read into the RECORD the language used by the Chief Justice of the United States when they referred those changes to this Congress. I am quoting a letter from the Chief Justice addressed to the Speaker of the House:

This transmittal does not necessarily indicate that the Court itself would have proposed these amendments in the form submitted.

Thus, it would be a mistake to believe that the changes to rule 11 have received a formal review and endorsement of the Supreme Court.

It has been referred to us, but the Chief Justice makes it clear that this does not necessarily represent the thinking of the Court, nor the wording the Court would have submitted.

One of the Justices wrote in dissent specifically about the changes to rule 11. That Justice—joined by others—felt that it was inappropriate and harmful to change rule 11 the way the Judicial Conference suggested. I want to share with the Members the comments of Justices Scalia, Thomas, and Souter from a dissent that they filed.

Quoting in part:

In my view, the sanctions proposal will eliminate a significant and necessary deterrent to frivolous litigation.

I will repeat that. The rules as revised under the changes "will eliminate a significant and necessary deterrent to frivolous litigation." That is the issue, and that is the subject of the amendment.

The amendment attempts to address the changes in the Rules of Civil Procedure and address what I believe would be a tragic mistake: Changing our rules in a way that reduces or eliminates sanctions against frivolous lawsuits. If this Chamber closes its eyes to those rule changes, we will have had a direct hand in encouraging frivolous litigation and eliminating reasonable deterrence to frivolous litigation. I think that is a competitive issue. I think it makes a difference in whether we keep jobs in the United States or not, and it makes a difference as to the cost of goods produced in America versus the rest of the world.

To continue with the remarks of the Justices:

The proposed revision would render the rule toothless, by allowing judges to dispense with sanctions, by disfavoring compensation for litigation expenses, and by providing 21-day safe harbor within which, if a party is accused of a frivolous filing withdraws a filing, he is entitled to escape with no sanctions at all.

The amendment before the body deals with those changes in rule 11. It does not eliminate one of the changes. One of the changes was the safe harbor provision. The testimony before the Judiciary Committee by a number of attorneys indicated a feeling on the part of some that the safe-harbor provision could well be a plus in eliminating frivolous actions.

The Justice of the Court that wrote this dissent did not feel so. I must confess that I have doubts as to whether the safe-harbor provision that has been added to the rules will be helpful or not. I suspect it will not. But I have not chosen to include it in this amendment. The safe-harbor provision will remain part of rule 11 even if this amendment passes. I have done that reluctantly, but I have done it because I wanted to retain the changes to rule 11 that even had a modicum of argument in favor of improving the situation.

The amendment before the body only focuses on four parts of the changes of rule 11 and basically, in those four areas, restores the impact and value of the old rule 11. I will go through them specifically, but I want to finish the comments of the Justices, because I think they address the case very well.

Here are their conclusions on the changes relating to rule 11:

Finally, the likelihood that frivolousness will even be challenged is diminished by the proposed rule, which restricts the award of compensation to "unusual circumstances," with monetary sanctions "ordinarily" to be payable to the court.

I will interrupt the Justices' dialog to describe that.

In the past, if somebody files a frivolous lawsuit against you, it was possible—not required, but possible—for you to get your ordinary, necessary attorney's fees refunded to you. One of the changes in rule 11 says that sanctions go to the court, not to the injured party.

What kind of incentive is that to even raise the issue? If the injured party does not get compensated, why would they even point it out or bring it up? It is just more attorney costs. The changes in rule 11 gut the deterrence to a frivolous lawsuit. This is a terribly important measure. We cannot afford to gut the Rules of Civil Procedure sanctions against frivolous actions. That is what the Justices are talking about in this quote.

I continue:

Under proposed rule 11(c)(2), a court may order payment for "some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation" only when that is "warranted for effective deterrence." And the commentary makes it clear that even when compensation is granted, it should be granted sparingly—for costs "directly and unavoidably caused by the violation." As seen from the viewpoint of the victim of an abusive litigator, these revisions convert rule 11 from a means of obtaining compensation for damages resulting from frivolous litigation to an invitation to file frivolous lawsuits.

Mr. President, I think these changes in rule 11 will eliminate the incentive of the injured party to alert the Court of these violations and will eliminate the deterrent value of sanctioning frivolous actions.

As Justice Scalia said:

I would not have registered this dissent if there were convincing indication that the current rule 11 regime is ineffective, or encourages excessive satellite litigation. But there appears to be general agreement, reflected in a recent report of the advisory committee itself, that rule 11, as written, basically works. According to that report, a Federal Judicial Center survey showed that 80 percent of district judges believe rule 11 has had an overall positive effect and should be retained in its present form.

Mr. President, that is 80 percent of the district judges did not favor—or at least according to this survey do not favor—those changes in rule 11.

The report continues:

Ninety-five percent believed the Rule had not impeded development of the law, and about 75% said the benefits justify the expenditure of judicial time.

True, many lawyers do not like rule 11. It may cause them financial liability, it may damage their professional reputation in front of important clients and the cost-of-litigation savings it produces are savings not to lawyers but to litigants. But the overwhelming approval of the rule by the Federal district judges who daily grapple with the problem of litigation abuse is enough to persuade me that it should not be gutted as the proposed revision suggests.

Mr. President, let me repeat Justice Scalia's comments, because I think it is very important. He refers to the feeling of the district judges that dealt with rule 11 before it was revised:

The overwhelming approval of the rule by the Federal district judges who daily grapple with the problem of litigation abuse is enough to persuade me that it should not be gutted as the proposed revision suggests.

Mr. President, I have before me a variety of comments I would like to make, and I would like to go into the details of the amendment that I have offered to the Senate for consideration. But I see my colleague from Iowa here on the floor, and I know he wishes to make remarks with regard to this proposed amendment.

I would like at this time to yield to the distinguished Senator from Iowa for the purposes of debate only.

The PRESIDING OFFICER (Mr. FEINGOLD). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I thank the Senator from Colorado for not only yielding, but I also thank him for his leadership in this area. He may have said this before I got to the floor, but this was of some concern to us last year as we reviewed within our Judiciary Committee the work of the courts and finally the Supreme Court in changing the rules of civil procedure.

So the Senator is not bringing up an issue that is new to the concern of our committee or the concern of this entire body. And he has spelled out very well the need for his amendment. But the amendment also expresses, over a long period of time, the concern that some of us have had on the Judiciary Committee, for the disregard that there is for rule 11.

So I rise in support of the Brown amendment, and I do that because we need to make sure that Federal courts are open to all who have legitimate claims. That is not the case now, because there is such a big amount of cases coming, some without merit, clogging our courts.

It seems to me that at the same time we are concerned that the Federal courts ought to be open to all legitimate claims, we also need to ensure that frivolous cases neither compete for attention with meritorious ones, nor that frivolous Federal litigation be used as a weapon.

As Federal civil litigation has grown, the number of frivolous cases has also grown.

Due to the general caseload increase, particularly in criminal cases, the time that passes before civil litigants can receive justice has lengthened tremendously. The rules of civil procedure had always had provisions against frivolous cases. But the original rule 11 was ineffective in preventing frivolous cases. So to take care of that problem, in 1983 sanctions were made mandatory.

79-059 O—97 Vol. 140 (Pt. 4) 11

The provision finally became effective in deterring the filing of cases that had not been fully investigated.

After 1983, rule 11 had teeth, and some lawyers who filed frivolous cases were bitten by those teeth. The provision was unfortunately weakened last year. No longer would sanctions be mandatory.

Worse, attorneys would no longer have to certify that the case appeared meritorious after reasonable investigation. Instead, Mr. President, an attorney, without penalty, could file a case without knowing that the case was meritorious. The attorney could file first and face no penalty if he or she reasonably believed evidence might be found to support the case afterward.

There would be no penalty under these circumstances, even if no evidence were ultimately found to support the frivolous claim. Moreover, no penalty could be imposed if the attorney agreed to dismiss the case. Even if a penalty were offered, it would be measured by its deterrent effect upon others, not upon the attorney who violated the rule by the award of attorney's fees.

So these provisions soon turned rule 11 into a hollow shell. If the rule is not soon changed, we will face an increase in frivolous cases in our Federal courts, further adding to their burden. This will cause our people and our economy to suffer wasted resources in time and money, without any benefit to anyone and with the denial of justice to a lot of people, because frivolous lawsuits in litigation benefit no one. It will not be deterred or punished under the current rule 11.

It certainly makes no sense to bring suit first and to determine that it is well grounded in fact later. Just think how long anyone would put up with this rule for criminal litigation—that a prosecutor could bring criminal charges first without any current belief that the law was broken and that the defendant violated it. That would be a regime that came right out of Alice in Wonderland, and of course there is no reason to implement such a system, then, in civil litigation, either.

The Brown amendment will restore effective sanctions to rule 11—that is all we are trying to do—as when rule 11 worked. No lawyer who practices in good faith nor any client of such a lawyer would have any reason to fear the changes that Senator BROWN is proposing. Moreover, the Brown amendment will not return rule 11 to its 1983 language in its entirety. Represented parties themselves will not be able to be sanctioned, and other changes that ensure the fairness of the rule will be maintained.

Cases that are not known to have a basis in fact or law at the time they are filed should not be brought. The Brown amendment will then fairly require that such cases not be brought.

I strongly support the amendment and I request that my colleagues support it, as well. It is something that will impact very positively upon our competitive position which the underlying bill is attempting to do. It will promote competitiveness from a point that is going to make a real impact because litigation, particularly litigation that is not legitimate, has economic consequences that are very negative.

So I urge the adoption of this amendment, and I yield the floor, Mr. President.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, I want to describe to the Chamber why it is this is offered on this amendment. We referred to that to some extent earlier.

It is my feeling, and I believe most Senators will agree, that the millions of dollars lost in frivolous litigation has an impact on the cost of goods and services in this country and has a significant impact on our potential competitiveness around the world. That is why I think it is important that this amendment be addressed along with S. 4.

But someone could, I think, fairly and reasonably raise the issue: Why offer it on this vehicle even though this is a competitiveness bill?

Well, the answer lies in part on how the changes were made last December to the Rules of Civil Procedure. The procedures for the adoption of these changes in the rules are basically this: A recommendation comes out of a committee, the Supreme Court forward it to us, and then it becomes effective unless Congress takes some action; that is, the changes in rules become effective automatically without any legislative action unless we act to overturn them.

The problem is this: We have had committee hearings in Judiciary, we have had discussions, but we have not had a bill referred out dealing with rule 11.

In other words, this Chamber has not had an opportunity to go on record on rule 11. I would not burden the Chamber with this amendment, even though I feel very strongly about it and I think it is important to competitiveness, if this Chamber had acted on rule 11 prior. I would not presume to move to a vote on these items if the Chamber had due consideration and had considered this and made their feelings clear.

But the reality is, the Rules of Civil Procedure are being changed without this body having a voice in that matter, without this body having a chance to vote on it. Thus, offering the amendment gives the body an opportunity to voice their concerns about it.

If the majority wants to encourage frivolous litigation or adopt these rules which encourage frivolous litigation, that, of course, will be up to each Senator and their own view of what is appropriate. But I would think it would be a tragedy to have this kind of change in the basic fundamental Rules of Civil Procedure take place in this country and not have the Senate of the United States even review the item or vote on it.

I have chosen only four elements of the changes in rule 11 to address in this amendment. As I have already spelled out, a number of the other changes are not addressed by this amendment. The only ones that I have brought to the attention of the floor are the ones that I think are so egregious that I think they cry out for correction.

I thought I would take a few moments and outline to the Senate, very briefly, the kind of changes that have taken place.

The first I hope to draw to your attention to is the question of what kind of standards you ought to apply to the veracity of or support for allegations and claims filed in court. Should you be able to allege items in the pleadings, that is, representations of the law and facts, which you do not know to be true?

Well, here is what the old rule 11 says, and I am quoting a portion, "that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and it is warranted by existing law or a good faith argument."

That is an excerpt from it, but I think it gets to the heart of it.

In other words, to make allegations in those pleadings, it has to be to the best of your knowledge and information and belief, formed after a reasonable inquiry. In other words, you have to do a reasonable check of the facts before you allege it and you have got to believe what you put down is true. I do not believe that is overly burdensome. It seems to me that is only reasonable.

What do the new changes in this regard in rule 11 say? Well, we are quoting from subparagraph (b)(3). It says this: "The allegations and other factual contentions have evidentiary support"—that seems reasonable, but here is the catch—"or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

The new rule 11 says, in effect, that you do not need to know if your claim has a basis in fact, but you think they might if you have a chance to investigate it, it might be true.

Let me use the exact language they use:

* * * likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

In other words, you can bring charges against somebody and they have to hire a lawyer and they have to answer the pleadings and they have to go

through enormous expense to answer charges that you do not even know are true.

Mr. President, that is not right. That is just not right—to say you can bring a lawsuit when you do not know what you are alleging is true and have not taken reasonable measures to find out. That makes no sense.

Now, I understand why some people might favor this change in the rule. Mr. President, I suspect that many of those people are ones who might be inclined to bring this kind of claim; that is, a claim that they do not know is accurate and have not taken the time to find out is accurate.

But that is not the way I was taught law. That is not the way generations of American attorneys have been taught law. That is not in conformance with the standards of ethical behavior that decades and decades and decades of attorneys in this Nation have followed.

This suggests a standard of behavior that is beneath what has been demanded by the Rules of Civil Procedure in the past.

Should we be lowering the standard of conduct that we expect from attorneys? Should we be suggesting that you can bring a lawsuit without knowing the facts that you allege, without doing a reasonable inquiry? I do not think so.

And that is why I felt so strongly about this that I brought this amendment before this body. We should have an opportunity to vote on whether or not you want to lower the standards for attorney's conduct, whether you want to lower the standards for bringing an action, whether you want to allow people to bring an action alleging things they do not even know are true.

So that is the first part of the amendment. Allow me to read from the amendment so it will be clear. It is under subsection (1) on page 2 of our amendment. It says: "In subsection (b)(3), by striking out 'or,'"—and then they quote the following passage that I quoted. It would read this way: an attorney certifies that "the allegation and other factual contentions have evidentiary support or are well grounded in fact." It is not as strong, even with my amendment, as I believe the previous rule was. It is meant to be a compromise. But it is meant to retain the very important requirement that there is evidentiary or factual support for what you allege in court. That is the first change. We simply say let us not denigrate the standards that attorneys have complied with over the years.

The second amendment deals with a different area. Let me read the passage that it involves. This deals with the question of sanctions. The new rule reads in subsection (c):

Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subsection (b) or are responsible for the violation.

The justices that we quoted earlier referred specifically to this section, pointing out that sanctions should be mandatory, not permissive, for rule 11 violations.

The question is this: If someone has violated the rules, has brought a frivolous action, after notice and reasonable opportunity to respond, and the court determines that the rule is violated, should the court order sanctions?

Put another way: If you violated rule 11 and it is pointed out that you violated rule 11 and you have time to respond and you do not correct your mistake, should you have to pay sanctions or not? The new rule says that you may or may not have to. I suggest if you violated the rules and it is pointed out to you and you still do not correct your mistake, that you ought to have to pay for the damage you caused. So our rule change is simple. We simply drop the word "may" and change it to "shall."

I should point out in this regard that the degree of the sanctions is still discretionary. The degree of sanctions you will have to pay can vary. If it is not severe, if it is not serious, the judge has the ability to make it very small sanctions. But the primary issue of whether sanctions should be mandatory is very clear. If you break the rules and you know you are breaking them and you do not correct it and you cause another party damage, this amendment says you have to be sanctioned. The new rules say not necessarily so.

There is a third change in the new rule 11 that I thought was so severe that we ought to address it. The new rule reads as follows:

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B) * * *.

They go on to spell out what the sanctions may be. That is a dramatic change. It says the only sanctions you are likely to get is that which would prevent you from doing it again. What is the better approach? In thinking about what is an appropriate sanction, one way of looking at it is to say if you have caused damage of $100, you ought to pay damage of $100. The new rule 11 says: No, no. Just enough so you will not do it again. It could be $1, not $100. It could be 10 cents, not $100. This does not say pay for your mistake; it does not remedy the damage caused the other party. It says we are only going to do what we think might prevent you from doing it again. That is not a sanction. That is not a deterrent.

The new rule runs counter to our philosophy of tort law. It runs counter to our sense of justice, that you ought to pay for your mistakes. Only deterring the next action is not enough. Keep in mind here what has been imposed on an innocent party—the legal fees for defending a frivolous suit or claim can be thousands upon thousands of dollars.

This Member does not feel that is right. This Member thinks the one who violates rule 11 ought to pay for the damage. So here is what our amendment does. We substitute that language that says only deter, with this:

In paragraph (2), by striking out the first and second sentences and inserting in lieu thereof "A sanction imposed for violation of this rule may consist of reasonable attorneys' fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party."

What does it change? It focuses on the damage done to the innocent party. It drops any reference to paying only part of the damage, and it shifts the focus away from deterrence and back to compensation for damage. It raises the possibility of paying a penalty to a party and to the court. It also preserves the possibility of using nonmonetary penalties. Does anybody think if you are guilty of bringing a frivolous action you ought not to have to cover the attorneys' fees of the other side? I hope if people object to this amendment they will address that.

So the question on this portion of the amendment is pretty clear. Is rule 11 designed only for deterrence or do you allow the court to address the attorneys' fees and other costs imposed on the other party?

The fourth change that we thought was so egregious that we had to address it, involves a slight modification in the changes proposed by the Judicial Conference. They proposed adding this language, and I will read it because it is pretty brief.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

What is subdivision (b)(2)? Well, (b)(2) reads as follows:

[The party or attorney certifies that] the claims, defenses, and other legal contentions therein are warranted by existing or by a nonfrivolous argument for the extension, modification, or reversal of existing law or establishment of new law.

What does all this deal with? It deals with the case where the attorneys argue for an extension or modification or reversal of existing law. In other words, someone brings an action knowing the law has not been read that way in the past, arguing it should be read that way in the future.

The new rule 11 says that when you bring that action knowing the law does not support your position and you lose, sanctions cannot be brought against you.

We do not strike that section. Although, Mr. President, I think it would make sense to strike it. But we do

modify it slightly. We leave in the part that does not allow sanctions against the complaining party, but we do permit sanctions against the party's attorney. Our fourth change simply says: "although such sanctions may be awarded against a party's attorney."

So we have retained the limitation on sanctions against the party whose attorney tries to reverse or extend the law, but, under our amendment, it would be possible to sanction the attorney.

What is the logic for that? A client does not know or understand the law as the lawyer does. It is the lawyer who makes the recommendation or decision to attempt to reverse or extend existing law. So if the attorney engages in frivolous arguments—and that is what we are talking about here, a frivolous argument that costs the other party money to defend—at least the attorney ought to bear responsibility for that. Otherwise, there is no disincentive against every lawyer in every lawsuit from filing a frivolous attempt to reverse existing law.

Mr. President, that is the body of the amendment. Those are four small, modest changes in the rules. It brings rule 11 partially back to what it was before the commission made its recommendation. It accepts those portions of the commission's recommendations that have some basis in logic.

This issue is fundamental. It is much more significant than simply some technical procedures under our Federal rules. The question that is before the Senate with this amendment is simply this: Do we sanction frivolous actions, or do we close our eyes and do away with the ability to sanction frivolous legal actions? Some may say, "Look, the new rule still has some restrictions in it." That would not be an unfair comment. But it is also quite clear that the heart and the soul and the guts of rule 11 have been torn out of it. It is also quite clear that rule 11's ability to deter frivolous actions has been abated.

Ultimately, the question we must answer on this amendment is whether it is in the Nation's interest to encourage attorneys and parties to bring frivolous actions, to misstate the law, to allege facts that they do not believe or do not know to be true or have not investigated. It seems to this Senator that it is only reasonable to ask somebody to investigate what they are going to allege in court. It seems to this Senator that parties should know some of the facts underlying what they charge in the pleadings. It seems reasonable to ask them to have some knowledge of it. It seems reasonable to ask that frivolous arguments not be made.

The question is whether or not we address the need for improved competitiveness in this Nation by making sure we do not gut the rules that protect us against frivolous lawsuits.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEFLIN. Mr. President, that amendment has no place on this bill. It obviously deals with a matter pertaining to the operation of courts. I do not know why it is even being brought here.

But let me explain a little bit about the procedure which happens regarding the Federal Rules of Civil Procedure, which include rule 11.

There has been controversy as to how courts ought to take care of its rulemaking authority, but the prevailing point of view is that the judiciary has the inherent power to determine its own rules. Congress felt it had a role, so it adopted the Rules Enabling Act by which the Rules of Procedure would be changed by first having a committee appointed by the Judicial Conference of the United States to study any proposed changes.

After the committee made its report to the Judicial Conference, which is a body composed of judges from all levels of the judiciary, the Judicial Conference would study any proposals and then make recommendations to the Supreme Court of the United States. Then the Supreme Court of the United States would consider the issue and make recommendations to Congress. Under the Rules Enabling Act, Congress has 6 months to either adopt the recommendations, to modify them, or to delete them.

This particular rule 11 that came up was submitted to the Congress and the 6-month time period expired prior to Congress' taking any action, and so all of the proposed Rules of Civil Procedure, including rule 11, went into effect on December 1. We knew toward the end of the Congress last year that if any changes had to be made, they had to be made before December 1.

If a Senator is interested in making a change to a rule, he or she could introduce a bill, but no bill was introduced proposing to change rule 11.

During that 6-month period last year in the House or in the Senate, if there were reasons for change, a bill could have been introduced in the House or the Senate.

In all fairness to Senator BROWN, he said that he did not like rule 11, but he never took the steps to modify the proposed changes, and now he is now belatedly taking steps on this particular bill, which is unrelated and not germane to Senator HOLLINGS' technology bill.

My colleague from Colorado raises issues about frivolous lawsuits and let me say that this has been considered by many concerned groups of people. The Brown amendment is completely opposed by the civil rights community. The Brown amendment is opposed by the Department of Justice. Six members of the Supreme Court approve rule 11 that is now in effect. Senator BROWN quoted from Justice Scalia's dissent. There are always going to be dissents over at the Supreme Court, but if you have a 6 to 3 vote in the Supreme Court of the United States, that is a pretty good vote.

As I listened to the criticisms of the new rule 11 from Senator BROWN and Senator GRASSLEY, I do not agree with them. I have before me a memorandum from the Administrative Office of the U.S. Courts which says:

I am writing to address criticism raised during the markup of H.R. 2814 that the amendments to Rule 11 of the Federal Rules of Civil Procedure will eviscerate the rule's effect on parties filing frivolous proceedings and papers.

The amendments to Rule 11 retain the rule's core principle to "stop and think" before filing. By broadening the scope of Rule 11 coverage and tightening its application, the amendments reinforce the rule's deterrent effect and also eliminate abuses that have arisen in the interpretation of the rule. Although the amendments strike a balance between competing interests, the changes strengthening the rule have been neglected by those critical of the amendments and need to be highlighted.

First, the amendments expand the reach of the rule by imposing a continuing obligation on a party to stop advocating a position once it becomes aware that that position is no longer tenable.

What they would like to go back to under the old rule, as I interpret it, would be to allow "a party to continue advocating a frivolous position with impunity so long as it can claim ignorance at the time the pleading was signed, which could have been months or years ago."

Second, the amendments specifically extend liability to a law firm rather than limiting the liability to the junior associate who actually signs the filing.

Third, the amendments specifically extend the reach of Rule 11 sanctions to individual claims, defenses, and positions, rather than solely to a case in which the "pleading-as-a-whole" is frivolous. Some court decisions have construed the rule to apply only to the whole pleading, relieving a party of the responsibility for maintaining a single or several individual frivolous positions.

So rule 11 that went into effect on December 1 was designed to strengthen this matter.

Fourth, the amendments equalize the obligation between the parties by imposing a continuing obligation on the defendant to stop insisting on a denial contained in the initial answer. Frequently, answers are general denials based on a lack of information at the time of the reply. The amendments impose a significant responsibility on the de-

fendant to act accordingly after relevant information is later obtained.

It is also important to highlight the provisions of the rule that the amendments retain. A party must continue to undertake "an inquiry reasonable under the circumstances" before filing under the amendments. In those cases where a party believes that a fact is true or false but needs additional discovery to confirm it, the amendments allow filing but only if such "fact" is specifically identified. The provision does not relieve a party of its initial duty to undertake a reasonable prefiling investigation. In cases of abuse, the court retains the power to sanction sua sponte and the aggrieved party can seek other remedies, e.g., lawsuit for malicious prosecution.

The existing rule does not require a court to impose a monetary sanction payable to the other party. Instead, the rule does provide a court with the discretion to impose an appropriate sanction, including an order requiring monetary payments to the opposing party and to the court.

Now, as to the hearings that we had in the Judiciary Committee, the old rule 11—that is one that was in effect before December 1 of 1993—had language that said that signature to a pleading demonstrated that the pleading "is well grounded in fact."

Senator BROWN at the subcommittee hearings on July 28, 1993, grilled the chairman of the Rules Advisory Committee that had proposed to the Judicial Conference this aspect of the rule change.

Senator BROWN claimed that under the new rule 11, a party "no longer has to research a claim and know that it is true." He feels that a party "no longer has to know his facts" before bringing a lawsuit.

Well, what Senator BROWN ignores from the testimony and the response the chairman of the committee, Judge Sam Pointer, gave is that the new rule 11 "still calls for and demands that attorneys have made a reasonable investigation under the circumstances."

As Judge Pointer demonstrated, oftentimes a party does not get all the facts until the discovery is finished, and the new rule does, indeed, require high standards and is not an egregious loosening of standards.

The point is that under this new rule 11, "if a plaintiff is going to make an allegation that he does not have hard support for, the plaintiff should say, I do this on information and belief, and be under a responsibility to withdraw that or not continue to assert it, if after reasonable opportunity for discovery, it turns out there is no basis for it."

Now, the new rule 11 has changes from the old rule in that if a violation regarding a pleading is found, then the court may impose sanctions.

Under the old rule, the language was that a court must impose a sanction if it found a violation of the rule.

As Judge Pointer demonstrated in his testimony, a court needs the flexibility or discretion to impose sanctions because a complaint, or for that fact an answer or motion to dismiss may contain a technical violation, but the rest of that pleading could be perfectly acceptable. Why, then, should a court be required to impose a sanction? Such discretion would not, in my judgment, give way to mass, irresponsible pleading.

Obviously, those who are purporting to change rule 11 raise the possibility that a party could intentionally bring a frivolous action and, upon a finding of such by the court, might escape a penalty. The response to that concern is that well, yes, there could be no penalty, but in that type of egregious intentionally frivolous pleading a court will most likely impose a sanction.

Under the new rule—

[I]f warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

Also, a court on its own initiative may begin a show-cause proceeding as to whether a party has violated the rule. This should take care of concerns by Senator BROWN that plaintiffs could irresponsibly plead, claim, et cetera. The court has its own power to initiate an inquiry as to whether rule 11 has been violated.

As the Senate can clearly see, this is a highly technical matter that we are being called upon to consider, and it is attempting to be amended onto an unrelated bill without the Members of this body having an adequate opportunity to study the issues. For us here in Congress on Friday afternoon to have to consider this amendment on an unrelated bill seems to me to be an irresponsible way of legislating.

So it is my opinion that we ought not to be involved in this at this time. The Judiciary Committee had hearings, and there was ample opportunity for action to be taken. But no action was brought forth through the form of a bill being introduced to make any changes to rule 11.

There was some effort to make some changes to rule 26(a)(1), which deals with discovery, and rule 30(b)(2) relating to the taking of depositions. The House did make some changes in those areas, but it was not passed here in the Senate.

There is still some effort being made to try to reach some sort of an agreement with the Department of Justice, the civil rights groups, and others pertaining to those matters, but that has not proceeded to the point where anything has been finalized.

It seems to me that it is just improper and an inappropriate time to bring this matter up at such a late stage as this. If there had been a real sincere effort, it could have been done within the 6-month time period allowed pursuant to the Rules Enabling Act. It seems to me that we ought not to be dealing with this amendment at this time on this unrelated technology bill.

It may be that a bill could be introduced, referred to the Judiciary Committee, hearings could be held, and then its merits could adequately be considered.

In closing, I do feel that the new rule 11 is a flexible rule, and it has provisions that strengthen, not weaken, efforts to prevent frivolous lawsuits. The new rule is expected to reduce the number of inappropriate motions requesting sanctions, thereby allowing courts to focus more attention to legitimate sanction requests.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Madam President, I would like to say a few words about S. 4. I would like to compliment the Senator from South Carolina on what he is trying to accomplish with this bill. I hope that we in the Senate can move beyond some of the divisions of the last few days and try to focus on what this bill does.

We have had an extraordinary amount of debate in the U.S. Senate about jobs and the economy. During the NAFTA debate, there was a lot of discussion on the floor about the problems of the American workplace. There are, as you know, major problems in the American workplace. Raytheon Corp. in Massachusetts just announced that it will have to lay off some 4,400 more people over the course of the next couple of years—over 1,000 of them in Massachusetts itself.

Most of the companies in the country are downsizing in one way or the other. There are enormous numbers of jobs that are moving to low-skill, low-wage countries. There have been a series of articles in the newspapers recently commenting on the fact that—notwithstanding the improvements in the economy—there has not been an improvement in wages in America.

Americans are working longer, they are working harder, and they are taking home less. In the 1950's, most Americans could look forward to a major increase in income in the course of just a couple of years. Well, in the 1980's, it took the average American 10 years to achieve in income growth what it took only 2 years to achieve back then. In 1989 and 1990, American workers lost in each year what it had taken them those entire 10 years to get. That is the predicament of the American worker.

And it is that predicament that S. 4 seeks to address.

S. 4 has received support from a wide variety of technology businesses who recognize that America has a competi-

tiveness problem, and who know there is nothing in this bill that smacks of industrial policy or the Government making decisions.

S. 4 is an effort to facilitate our ability to take products from the laboratory out into the workplace. It will help us avoid the situation we have faced in the past when Americans have developed technology—for the VCR, the fax machine—only to see it developed and manufactured by the Japanese, the Europeans, and others.

The fact is this bill will help create jobs.

Maybe this seems abstract to some. Let me cite a couple of examples of the tangible results the programs of the National Institute of Technology produce. In Massachusetts, Teradyne, Inc., is now marketing a new software package that was developed in conjunction with NIST. That package allows manufacturers of analog and analog/digital electronic components to actually test the components of these devices without compromising test accuracy.

This is a technique which would not have been developed, marketed, or produced without the NIST effort. And, without NIST, Americans would not be employed in this activity.

Studies by NIST researchers have pointed the way to significant processing improvements adopted by Ibis Technology, Inc., which is a company in Danvers, MA, the sole U.S. supplier of an experimental material. The NIST assistance can reduce by a hundredfold the number of defects in this material, making Ibis more competitive and allowing it to be a more secure employer of American workers.

I sincerely hope we can understand what is at stake here. We need to be able to commercialize ideas faster—better—and this bill permits industry to make choices about how to do that. It is an important bill for creating jobs and making this country more competitive.

I hope we can look a little harder at the ways in which S. 4 helps America to be competitive and helps us to create jobs and move away from a partisanship that seems to characterize so much of what happens in Washington.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Madam President, the distinguished Senator from Massachusetts is right on target. There is no question that our dilemma was foreseen by many over the past 10 years, specifically the U.S. Council on Competitiveness, headed up by John Young of Hewlett-Packard, George Fisher, then with Motorola and now Kodak, and other business leaders, certainly a nonpartisan group, which issued a document entitled "Gaining New Ground, Technology Priorities for America's Future" back in 1992, 2 years ago, and it says:

The U.S. position in many critical technologies is slipping and, in some cases, has been lost altogether. Future trends are not encouraging.

I ask unanimous consent to print the entire document in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GAINING NEW GROUND: TECHNOLOGY PRIORITIES FOR AMERICA'S FUTURE

EXECUTIVE SUMMARY

Throughout America's history, technology has been a major driver of economic growth. It has carried the nation to victory in two world wars, created millions of jobs, spawned entire new industries and opened the prospect of a brighter future. In many respects, technology has been America's ultimate comparative advantage. Because of our great technological strength, U.S. manufacturing and service industries stood head and shoulders above other nations in world markets.

That comforting view is under assault. As a result of intense international competition, America's technology edge has eroded in one industry after another. The U.S.-owned consumer electronics and factory automation industries have been practically eliminated by foreign competition; the U.S. share of the world machine tool market has slipped from about 50 percent to 10 percent; and the U.S. merchant semiconductor industry has shifted from dominance to a distant second in world markets. Even such American success stories as chemicals, computers and aerospace have foreign competitors close on their heels.

Blame for the problems has been laid at many doorsteps: sluggish domestic productivity growth, closed foreign markets, the deteriorating U.S. education and training system, poor management and misguided government policies in areas ranging from capital formation to product liability laws. Some fear the United States is too preoccupied with national prestige technology projects to worry about investing in the generic enabling technologies that are critical to the competitiveness of many industries. Others charge that the United States is increasingly turning over the difficult job of commercialization and manufacturing technology to foreign companies. Unfortunately, in turning over technology to its competitors, America is turning over the keys to economic growth and prosperity.

The American people and its leaders have too readily assumed that preeminence in science automatically confers technological leadership and commercial success as well. It does not. America assumed that government support for science would be adequate to provide for technology. It is not. In too many sectors, America took technology for granted. Today, the nation is paying the price for that complacency.

This report examines the U.S. position in critical technologies and the actions the nation must take to strengthen it.

KEY FINDINGS

1. There is a broad domestic and international consensus about the critical generic technologies driving economic growth and competitiveness

The U.S. Office of Science and Technology Policy, the U.S. Department of Commerce, the U.S. Department of Defense, Japan's Ministry of International Trade and Industry, the European Community and many individual industry groups have all compiled similar lists of critical technologies. This project examined critical technologies from the point of view of a cross section of U.S. industry and confirmed the overlap of critical technologies that appears in these other studies. Given the broad consensus about critical technologies, it is time to move beyond making lists and begin implementing programs that will strengthen U.S. technological leadership.

2. The U.S. position in many critical technologies is slipping and, in some cases, has been lost altogether. Future trends are not encouraging

America pioneered such technologies as numerically controlled machine tools, robotics, optoelectronics and integrated circuits only to lose leadership in them to foreign competitors. Moreover, in many critical technologies, ranging from leading-edge scientific equipment to precision bearings, trends are running against U.S. industry. (See lists on pages 7 to 11.) The erosion of the U.S. position in critical technologies has helped to highlight an important lesson about industrial competition in the late 20th century: a lead in science is not sufficient to sustain technological leadership. Scientific excellence also must be supplemented by a strong position in critical technologies and by the ability to convert these technologies into manufactured products, processes and services that can compete successfully in the marketplace. Otherwise, America's jobs, standard of living and national security will be in jeopardy and, because technology is increasingly driving new scientific advances, so will America's future lead in science.

3. Foreign governments are systematically pursuing leadership in critical technologies.

Governments in other major industrialized countries have used R&D incentives, public-private technology consortia, infrastructure programs, tax policy, trade policy and regulations to improve the technological competitiveness of their industries. The most successful efforts combine funding with extensive public-private collaboration. Partly as a result of these programs, U.S. industry has lost extensive market share in many technology-intensive products (such as memory chips and machine tools) and, in some cases, entire industries (such as consumer electronics). Problems arising from foreign government actions have been compounded by the lack of a timely, coordinated and effective U.S. industry and government response.

4. U.S. public policy does not adequately support American leadership in critical technologies, and U.S. national priorities do not sufficiently address issues related to the role of technology in U.S. competitiveness.

Other nations already spend more on nondefense R&D as a percent of GDP than the United States, and they are steadily increasing these levels. The United States needs to increase support for R&D and focus more resources on non-defense R&D that is commercially relevant. In 1990, only a relatively small fraction of the $67 billion federal R&D budget was directly relevant to the real technology needs of American industry. The low priority given to technology and competitiveness in the federal R&D budget is reflected in America's tax, trade and regulatory policies. It is also reflected in the decline of public investment in infrastructure, which fell from 5.8 percent of GNP in the mid-1950s to 3.9 percent in the mid-1980s. Unless R&D programs are reinforced by policies in these other areas that encourage private-sector investment in technology, they will have a limited impact on U.S. competitive-

ness. The most effective programs are those that encourage sharing of the cost and results of precompetitive research and that stimulate private-sector proprietary R&D and commercialization.

5. Most of the technologies that will drive economic growth over the next decade already exist, and industry needs to improve its ability to convert them into marketable products and services

Many of the competitiveness problems facing U.S. industry stem from industry's failure to commercialize technology effectively. Although it is important to discover breakthrough technologies that create entire new industries, it is equally important to develop existing technologies that improve industry's performance in large, established markets. In addition to research, market success depends on management systems that encourage the development and application of technology, education and training programs that build work force skills, and world-class commercialization systems. Unlike companies having strengths in these areas, they will not be able to translate their technical advantages into technological leadership.

6. America's research universities constitute a great national asset, but their focus on technology and competitiveness is limited

U.S. universities produce first-rate scientists and engineers and conduct pioneering research that lays the foundation for many advances in technology. However, their focus on undergraduate education and on preparing future scientists and engineers for the needs of industry, especially in the manufacturing sector, has been inadequate. A closer relationship with industry would help university faculty broaden their understanding of industry's education requirements, develop appropriate curriculums and motivate students. It would also help university researchers focus on challenging leading-edge technology and manufacturing research that is relevant to the private sector. In reaching out to industry, however, universities should be careful not to jeopardize their basic research programs, which have served the nation well.

KEY RECOMMENDATIONS

The recommendations highlighted below stem from one overriding conclusion: In order to create quality jobs, generate strong economic growth and safeguard national security, the U.S. Government and private sector should work together to develop coherent policies to ensure U.S. leadership in the development, use and commercialization of technology.

The first two recommendations focus on actions that the federal government should undertake; the second two on U.S. industry's responsibilities; and the last on what American universities can do. Taken together, they would make a major contribution to America's technological competitiveness. An in-depth discussion of these recommendations can be found in Chapter IV.

1. To enhance U.S. competitiveness, the President should act immediately to make technological leadership a national priority

The United States is already losing badly in many critical technologies. Unless the nation acts today to promote the development of generic industrial technology, its technological position will erode further, with disastrous consequences for American jobs, economic growth and national security. The federal government should view support of generic industrial technologies as a priority mission. It is important to note that this mission would not require major new federal funding. If additional funds for generic technology programs are required, other federal R&D programs, such as national prestige projects, should be redirected or phased in more slowly to allow more resources to be focused on generic technology. The President should move quickly to take the following actions:

Announce his intention to increase dramatically the percentage of federal R&D expenditures allocated to support for critical generic technologies and present a five-year implementation plan as part of his FY1993 budget.

Direct the Office of Science and Technology Policy and the newly created Critical Technologies Institute to work with industry to set priorities in critical generic technologies, translate these priorities into specific action plans and implement these programs.

Direct key technology agencies—such as the National Science Foundation, the National Institutes of Health, the National Institute of Standards and Technology, and the Defense Advanced Research Projects Agency—to work with industry to advance U.S. leadership in critical generic technologies.

Implement decisions to ensure that the federal laboratories' contribution to U.S. technological leadership and competitiveness is commensurate with the national investment in them.

Make the cost of capital for the development of priority technologies competitive with that of America's major competitors by accelerating depreciation schedules for manufacturing equipment, making the R&D tax credit permanent and broadening it to include manufacturing engineering and process R&D, and placing a permanent moratorium on Treasury Regulation 1.861-8.

Promote capital formation, antitrust reforms, regulatory guidelines, export policies and foreign market-opening measures that are conducive to U.S. manufacturing, investment in technology and quality of life.

Make technological leadership a central theme in the Administration's public communications efforts and highlight it in the President's annual State of the Union address, budget submissions and other messages on national priorities.

Ensure that key policymaking bodies, such as the National Security Council and relevant agencies and departments, are more closely involved in issues related to technology and competitiveness.

2. The Federal and State Governments should develop policies and implement programs to ensure that America has a world-class technology infrastructure

The nation's technology infrastructure is critical to its international competitiveness, national defense and world leadership. Technology infrastructure consists of physical assets, such as equipment, facilities and networks, and human capital, such as skilled scientists, engineers and other personnel. Infrastructure programs traditionally have been a responsibility of the federal and state governments. The federal government should assess the nation's technology infrastructure needs, benchmark what foreign governments are doing and develop strategies, programs and implementation plans to make sure that the United States has a world-class technology infrastructure. The Administration's 1989 report on high performance computing and networking, as well as related Congressional legislation, represent an infrastructure program that should be fully implemented. The following are essential aspects of a successful technology infrastructure program:

Broad relevance to many sectors of the U.S. economy.

Close links with public- and private-sector efforts to develop relevant critical generic technologies.

Support for education at all levels.

Investment in related university research, education, facilities and equipment.

Measures that make it easy for industry to invest in, deploy and use infrastructure to enhance its competitiveness.

3. U.S. Industry should establish more effective technology networks to help it compete in the international marketplace.

U.S. industry associations, professional societies, R&D consortia, universities and research institutes should all play more substantial roles promoting technological collaboration and in diffusing technology and information that promote America's technological competitiveness. Although there is an understandable sensitivity to sharing proprietary technology, the United States can, and must, do a better job of diffusing new ideas throughout industry and of sharing the cost and risk of developing technology. The Council on Competitiveness will take a leading responsibility to work with these organizations to promote technology networks. Industry groups and associations should take the following actions:

Strengthen their competence in technology issues.

Promote antitrust reforms that enable them to establish technology networks and share information about international market developments.

Identify and disseminate information about key generic technologies and world-class commercialization practices throughout the U.S. private sector.

Jointly assess critical generic technologies and develop technology road maps to boost U.S. competitiveness.

Build cooperative supplier networks that help set standards and share information in critical technologies.

4. U.S. firms should set a goal to meet and surpass the best commercialization practices of their competitors.

American management needs to improve its ability to commercialize technology. U.S. companies should understand and build on the successful commercialization practices of their domestic and foreign competitors. To achieve this goal, U.S. firms should benchmark their competitors. They should set appropriate goals and allocate the necessary resources. They should motivate, train and empower their employees to take responsibility for achieving these goals. And they should develop the external relationships necessary to accelerate the commercialization process. The Council on Competitiveness will play a role in encouraging industry to take these steps. Action in the following areas is especially important:

Match the Administration's goal to increase dramatically the R&D allocated to critical generic technologies and develop a five-year implementation plan (see recommendation 1).

Institute total quality management and continuous improvement.

Strengthen process engineering.

Accelerate time-to-market to competitive levels.

Improve the ability to share risks and spread costs for developing technology across a broad base.

Continuously upgrade the skills of the work force.

Encourage corporate executives and general managers to give strategic factors equal weight with financial projections in technology-based businesses.

5. While keeping their basic research programs strong, universities should develop closer ties to industry so that education and research programs contribute more effectively to the real technology needs of the manufacturing and service sectors

America's research universities are one of its great technological assets and should be strengthened. In pursuit of new knowledge, however, many universities have lost sight of issues related to technology and manufacturing that affect U.S. competitiveness. Universities should strengthen their focus on the manufacture, use and commercialization of technology. In the process, however, it is important not to jeopardize the basic research contributions of universities. Universities should focus on the following actions:

Develop close ties with U.S. industry and make efforts to ensure that important technological advances are communicated to potential U.S. user on a priority, expedited basis.

Make efforts, in cooperation with employers, to ensure that education programs in engineering and management reflect the real needs of industry.

Keep basic science and engineering programs strong and strengthen research capabilities so that they can adequately address fundamental, long-term technology issues that are relevant to industry.

CRITICAL TECHNOLOGIES

The following list of critical generic technologies represents the private sector's assessment of the technologies that will drive U.S. productivity, economic growth and competitiveness during the decade ahead. These technologies span different sectors of the U.S. economy. They are divided into five categories: 1) materials and associated processing technologies, 2) engineering and production technologies, 3) electronic components, 4) information technologies and 5) powertrain and propulsion technologies.

The list also includes an assessment of the U.S. competitive position in each technology. The assessment is based on extensive analysis and reflects the judgment of experts in industry who understand both the critical technologies and the relevant markets. In general, the competitive position shows the status of technologies that are incorporated in products or processes *in the marketplace*, rather than technologies *in the laboratory*. The U.S. position in each of the technologies is categorized in one of four ways.

Strong—U.S. industry is in a leading world position and is not in danger of losing this position in the next five years.

Competitive—U.S. industry is roughly even with world-best. This category includes technologies where the United States is leading but the leadership is unlikely to be sustained over the next five years, technologies where the United States is staying even and technologies where different countries lead in different niches.

Weak—U.S. industry is behind in technology or likely to fall behind in the next five years. Changes are needed if the United States is to remain in the businesses related to this technology.

Losing Badly or Lost—U.S. industry is no longer a factor or is not likely to have a presence in the next five years. It will take considerable effort or a major change in technology for the United States to become competitive.

Mr. HOLLINGS. Madam President, this is quoting from section 4, and I read it because this is exactly what the Senator from Massachusetts is saying now:

U.S. public policy does not adequately support American leadership in critical technologies, and U.S. national priorities do not sufficiently address issues related to the role of technology in U.S. competitiveness.

Other nations already spend more on nondefense R&D as a percent of GDP than the United States, and they are steadily increasing these levels. The United States needs to increase support for R&D and focus more resources on nondefense R&D that is commercially relevant. In 1990, only a relatively small fraction of the $67 billion Federal R&D budget was directly relevant to the real technology needs of American industry. The low priority given to technology and competitiveness in the Federal R&D budget is reflected in America's tax, trade and regulatory policies. It is also reflected in the decline of public investment in infrastructure, which fell from 5.8 percent of GNP in the mid-1950's to 3.9 percent in the mid-1980's. Unless R&D programs are reinforced by policies in these other areas that encourage private-sector investment in technology, they will have a limited impact on U.S. competitiveness. The most effective programs are those that encourage sharing of the costs and results of precompetitive research and that stimulate private-sector propriety R&D and commercialization.

I want to thank the Senator from Massachusetts because he is right in lockstep with the heads of American industry, the philosophy behind S. 4 and the actual provisions of S. 4, industry-initiated, industry-financed at least by half and in the main by our experience and peer reviewed, and you cannot do it better than that. We do it in a very modest fashion. The amounts have always come in question but when you are starting in with the National Science Foundation in this which had not been provided for before, $75 million when you start in with the computer superhighway of information, when you go in for the actual construction costs out there at the old Bureau of Standards these other add-ons and everything else, plus the DARPA Programs to be administered by the Department of Commerce, some 85 programs we put in the RECORD in 31 different States, yes, it is more and it is intended to be more, and incidentally according to this council not near enough, but I do thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I would like to add to what the Senator from South Carolina is saying. I do not think a lot of us on this side of the aisle have too often been accused of being the mouthpieces of big business, but I have a letter received recently from Paul Allaire, the president of the Council on Competitiveness, which says:

DEAR SENATOR KERRY: On behalf of the Council on Competitiveness—a coalition of chief executives from U.S. industry, higher education and labor—I would like to express my support for S. 4, the National Competitiveness Act.

He specifically points to what the ATP and the diffusion of technology for small- and medium-sized manufacturers will do. Mr. Allaire points particularly to stimulating investment in high performance computing and communications and says, "These applications will help translate the potential of a 21st century information infrastructure into tangible economic and social benefits for the American people."

Who is the Council on Competitiveness? Well, it is the Xerox Corp., Cummins Engine Co., the Amalgamated Clothing and Textile Workers Union, Rockwell International, BellSouth Corp., Eastman Kodak Co., National Association of Manufacturers, the Chase Manhattan Corp., The Ameritech Corp., the Boeing Co., Hewlett-Packard Co., and a number of educational institutions.

S. 4 is an effort to try to make the United States competitive. It deserves bipartisan support.

Mr. HATCH. Mr. President, it is a pleasure for me to join Senator BROWN today in support of his amendment to restore crucial provisions of rule 11 of the Federal Rules of Civil Procedure.

I support this amendment which will restore a very effective tool used by Federal judges to deter frivolous litigation. Certain of the recent rule changes which I opposed, have merely added to the delay and expense in our civil justice system. Trial lawyers who file baseless lawsuits are one group in our society that needs no relief, at least not the kind embodied in the recent changes to Federal rule 11. The American public will ultimately pay the high price for these frivolous litigation tactics.

I offer my support for this amendment because it discourages, not rewards, shoddy litigation practices. It requires that sanctions be imposed where there is a violation of rule 11 and eliminates the protection offered to those filing frivolous lawsuits. Our experience with former rule 11 has demonstrated its effectiveness in reducing frivolous litigation and should be restored.

Trial attorneys who file frivolous pleadings, in my opinion, do not deserve the court's protection or the benefit of a warning by opposing counsel to withdraw or correct their improper pleadings. This amendment will require judges to impose sanctions on irresponsible litigants who file frivolous suits. I urge my colleagues to join me in support of this amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. KEMPTHORNE. Thank you. I ask unanimous consent that the pending Brown amendment be laid aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1497

(Purpose: To provide an exemption from citation by the Secretary of Labor under the Occupational Safety and Health Act to employers of individuals who perform rescues of individuals in imminent danger as a result of a life threatening accident, and for other purposes)

Mr. KEMPTHORNE. Madam President, I send to the desk then this amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Idaho [Mr. KEMPTHORNE] proposes amendment numbered 1497.

Mr. KEMPTHORNE. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment add the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Heroic Efforts to Rescue Others Act" (HERO Act).

SEC. 2. FINDINGS.

Congress finds that—

(1) existing Occupational Safety and Health Administration regulations require the issuance of a citation to an employer in a circumstance in which an employee of such employer has voluntarily acted in a heroic manner to rescue individuals from imminent harm during work hours;

(2) application of such regulations to employers in such circumstance causes hardships to those employers who are responsible for employees who perform heroic acts to save individuals from imminent harm;

(3) strict application of such regulations in such circumstance penalizes employers as a result of the time lost and legal fees incurred to defend against such citations; and

(4) in order to save employers the cost of unnecessary enforcement an exemption from the issuance of a citation to an employer under certain situations related to such circumstance is appropriate.

SEC. 3. CITATIONS.

Section 9 of the Occupational Safety and Health Act (29 U.S.C. 658) is amended by adding at the end the following new subsection:

"(d)(1) No citation may be issued under this section for a rescue activity by an employer's employee of an individual in imminent harm unless—

"(A)(i) such employee is designated or assigned by the employee's employer with responsibility to perform or assist in rescue operations; and

"(ii) the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment;

"(B)(i) such employee is directed by the employee's employer to perform rescue activities in the course of carrying out the employee's job duties; and

"(ii) the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

"(C)(i) such employee—

"(I) is employed in a workplace that requires such employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water;

"(II) has not been designated or assigned to perform or assist in rescue operations; and

"(III) voluntarily elects to rescue such an individual; and

(ii) the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations—

(I) of the arrangements for rescue;

(II) not to attempt rescue; and

(III) of the hazards of attempting rescue without adequate training or equipment.

"(2) For purposes of this subsection, the term 'imminent harm' means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.".

Mr. KEMPTHORNE. Madam President, we discussed this issue yesterday so I am going to merely recap some of the high points of this whole issue. This is something that many Americans are very well aware of this particular situation because Paul Harvey carried it on his news commentary. It has been an article that was written in the Reader's Digest. Dave Barry did a very good article about this. It has to do with a situation that occurred in Garden City, ID.

There was a construction site and at this construction site a trench caved in and it buried one of the workers. Hearing muffled screams and cries, other workers that happened to be going by that were not affiliated with this construction site ran to see what the commotion was and found that this worker had been buried alive. You could only see about one inch of the back of his head. He was covered with debris and dirt. These workers that happened to be coming by immediately began to remove the debris and dirt around the trapped worker's head so he could breathe. The trench then began to fill with water. So they rerouted the water so that he would not drown until the emergency medical people could come with the appropriate tools that allowed them to extricate him from that trench.

For their efforts these workers received from the mayor of that particular community a proclamation that declared them heroes. Indeed they were heroes for their quick thinking and their action. They saved this trapped worker's life.

Unfortunately, the Federal Government issued them citations from OSHA that equalled nearly $8,000 for the actions that they took.

Madam President, I ask unanimous consent that the Reader's Digest article and Dave Barry's article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Dave Barry's column in the Chicago Tribune]

There are times when, as a taxpayer, I just have to put my head between my legs and weep with joy at the benefits I am receiving from the federal government ("Official Motto: This Motto Alone Cost $13.2 Billion").

But before we do anything, let's salute the Occupational Safety and Health Administration (OSHA) office in Idaho for its prompt action regarding improperly attired rescue personnel.

Here's what happened, according to an article in The Idaho Statesman written by Martin S. Johncox and sent in by Joe Auvil:

On May 11 two employees of DeBest Inc., a plumbing company, were working at a construction site in Garden City, Idaho, when they heard a backhoe operator yell for help. They ran over and found that the wall of a trench—which was not dug by DeBest—had collapsed on a worker, pinning him under dirt and covering his head.

"We could hear muffled screams," one of the DeBest employees said. So the men jumped into the trench and dug the victim out, quite possibly saving his life.

What do you think OSHA did about this? Do you think it gave the rescuers a medal? If so, I can see why you are a mere lowlife taxpayer, as opposed to an OSHA executive. What OSHA did—remember, I am not making this up—was fine DeBest Inc. $7,875. Yes, OSHA said that the two men should not have gone into the trench without (1) putting on approved hard hats, and (2) taking steps to insure that other trench walls did not collapse and water did not seep in. Of course, this might have resulted in some discomfort for the suffocating victim. ("Hang in there! We should have the OSHA trench-seepage-prevention guidelines here within hours!") But that is the price you pay for occupational health and safety.

Unfortunately, after DeBest Inc. complained to Idaho Sen. Dirk Kempthorne, OSHA backed off on the fines. Nevertheless this incident should serve as a warning to would-be rescuers out there to comply with all federal regulations, including those that are not yet in existence, before attempting to rescue people. Especially if these people are in, say, a burning OSHA office.

[From That's Outrageous, Reader's Digest, January 1994]

FINED FOR HEROISM

Kavin Gill and another employee of DeBest Plumbing, Inc. had to act quickly to rescue 21-year-old Dwight Kaufman after a dirt trench wall collapsed on him at a construction site near Boise, Idaho. Using their hands as tools, they dug the dirt from around his head before a rescue crew arrived and pulled him out of the ditch.

"We could hear muffled screams. You could just see about one inch of the back of his head," Gill said. His shoulders were pinned from the collapsed piece. With his head covered, I think he would have died."

But the federal Occupational Safety and Health Administration didn't see it that way. It fined the Boise plumbing company nearly $7875 because the good Samaritans failed to put on hard hats and took no precautions against other trench walls falling on them during the rescue.

Idaho OSHA Director Ryan Kuemichel said that "rescues must only be attempted after taking proper precautions to ensure that victims are not injured in secondary cave-ins."

But Gill said he, fellow worker Myron Jones and a bystander didn't have the time to find their hats, remove water from the trench and shield the walls.

Sen. Dirk Kempthorne (R., Idaho) asked the Labor Department to review the case, and the fines were dismissed. Kempthorne says he will draft legislation that exempts acts of heroism from OSHA fines. "Thank goodness there are still people in this world who are willing to help their neighbors—despite an absurd bureaucratic mind-set in the federal government that would seem to discourage saving a life," Kempthorne said.

Mr. KEMPTHORNE. Just to give you a sense of this let me tell you what these citations were for. The first citation for $2,250 was cited because the two employees were not properly trained in recognizing and avoiding unsafe conditions. Remember, they just happened to be coming by.

The second citation imposed a fee of over $1,000 because the workers did not first run to their vehicles and retrieve hard hats before performing the rescue.

And, as Dave Barry said, "This might have resulted in some discomfort for the suffocating victim."

The third citation, $2,250, because the employees were working in an excavation where water had accumulated. They rerouted the water so that this individual would not suffocate.

And the fourth citation, $2,250, that the employees should have shored up the walls of the trench before attempting to rescue the victim.

Again, it has been determined that, had that happened, in all likelihood the individual would have died.

To quote Readers' Digest:

It is outrageous for OSHA to suggest that when someone's life is in jeopardy that any would-be rescuers might first take a refresher course in safety, run to their truck and put on a hard hat, and then make a trip to the hardware store to get materials to shore up the trench walls before saving a life.

I asked the OSHA office in Idaho to suspend these citations. They refused to do so. They said their preferred strategy in these matters was to cite everyone for any possible violation and then let them appeal the decision.

Well, that means that heroes are going to find that they have to then go and defend themselves and probably pay for an attorney and lose hours at their job site because they are now defending themselves. And what are they defending themselves for? They are defending the act of saving a life.

After the Idaho office would not suspend this, I then called the Department of Labor here in Washington. Within 24 hours, they called and said, "There has been a real mistake. We are tearing up those citations."

Well, Madam President, I think we all can agree that heroes deserve commendations, not citations. Heroes need to be honored, not punished.

This legislation that I am now proposing allows an exemption that, when a heroic act takes place and is done to save a life, we do not have to abide strictly by the letter of the law, but that we can interpret the spirit of the law, because that is how we ought to treat heroes.

So we are embarking upon something perhaps new and novel, because I am suggesting that we are going to now legislate common sense into the Federal Government. But I think this example clearly demonstrates that, at least with regard to OSHA, they did not use common sense.

So, Madam President, that is the essence of this amendment. I appreciated the comments yesterday by the distinguished Senator from South Carolina, who really, I think, understood the intent of this.

When this is considered, Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. The amendment of the Senator from Idaho is well conceived. At my suggestion, the distinguished Senator has coordinated with the leadership in our Labor, Health and Human Resources Committee, the pertinent committee on this side of the aisle, and made some suggested changes.

I think we should be prepared to vote. I think it was checked on both sides of the aisle.

I ask unanimous consent that the vote on Senator KEMPTHORNE's amendment occur at 2:45, with no other amendments in order prior to the disposition of that amendment, with the time for the debate equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I had thought that the Brown amendment was still subject to debate. I have no objection to the thrust of what the distinguished Senator from South Carolina has in mind, but I would like to have leave to speak on the Brown amendment for 5 minutes before the vote.

Mr. HOLLINGS. I will amend my request in order for the Senator from Pennsylvania to speak for an additional 5 minutes.

The PRESIDING OFFICER. Without objection, that is the order.

The Senator from Pennsylvania is recognized.

AMENDMENT NO. 1496

Mr. SPECTER. I thank the Senator from South Carolina and I thank the Chair.

Debate has occurred today on the Brown amendment, which would seek to change the recommendations of the advisory committee on Federal Rule of Civil Procedure 11.

It is my thought that the appropriate way to take up this issue would be on a report from the Judiciary Committee, where the matter arises in the normal course of business, with a report from the Subcommittee on Courts to the full Judiciary Committee and then to the Senate so that we could have a fuller record.

There had been some reference to a survey of judges wanting the rule to remain as it is today. I believe that we need more information on that, and that would be accomplished by having regular order followed through the Judiciary Committee.

The principal change in the rule, as recommended by the advisory committee, is to have sanctions paid to the court where there are frivolous lawsuits brought.

By way of brief explanation, rule 11 now provides that if a party brings a suit in Federal court which is frivolous, then the court has the authority to impose sanctions. The rule in its prior form had those money awards payable to the party who was on the other side. The new rule would have that monetary award or sanction paid to the court.

The Supreme Court has reviewed this rule and has said, on a 6 to 3 vote, three judges dissenting, that the new rule should take effect. So the majority of the Court says that it is the preferable form to have the sanction, or the money award, paid to the court instead of to the opposite party.

My own view, Madam President, is that it is preferable to have this kind of a determination made in the judicial proceeding, as opposed to the legislative branch. The courts have traditionally structured the Rules of Civil Procedure and have made recommendations for changes. The courts are in the best position to know exactly what is happening with respect to the nature of the lawsuits which are brought, because the judge sees and hears the entire proceeding. The judge reads the pleadings. The judge sees what is developed by way of evidence on discovery through depositions and interrogatories.

The judges hear the arguments presented and have a much better feel for when a lawsuit is frivolous. And the courts, with this experience, it seems to me, are in the best position to know whether the interests of justice are best served by having the sanction paid to the court or by having the sanction paid to the opposing party.

The thrust of the rule change, obviously, is that there is more of an objective determination if the court or the U.S. Government is the beneficiary of the sanctions. Customarily in our society, when a fine is imposed or a sanction is imposed in an analogous criminal proceeding, that money is paid to the U.S. Government; it is not paid to the injured party.

It is my view, therefore, that the committee advising the court is in the best position. The Supreme Court itself, on a 6 to 3 vote, is in a better position than the Congress, certainly at this stage when an amendment is offered on a bill which does not take up this matter directly.

So, at least until we have action by the Judiciary Committee, it is my thought that Congress should not intervene at this stage on an amendment to a bill which deals with national competitiveness.

So, with respect to my colleague from Colorado, who has proposed a number of worthwhile amendments which I have supported on this bill, it seems to me that this amendment ought to be rejected.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SIMON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON. Madam President, I ask unanimous consent to speak for 3 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HATE CRIMES

Mr. SIMON. Madam President, I am rising because the FBI has, this week, released their hate crimes statistics. Back about 3 years ago we passed legislation to ask the FBI to do this, and they have been doing it. The good news is about twice as many law enforcement authorities are doing it as last year. One of the States that is doing a better job is my own State of Illinois. In 1991 we had 98 reporting agencies and in 1992, 620 reporting agencies.

The figures we have are for 1992. Six out of every 10 hate crimes had a racial basis, 2 out of every 10 a religious basis, and 1 out of every 10 each, an ethnic or sexual orientation basis. Antiblack bias accounted for 36 percent; antiwhite, 31 percent; anti-Jewish, 13 percent.

These are 1992 figures. I have just discussed with the senior Senator from California the fact that California is listed as one of the States with only seven police departments participating. I see my friend from North Carolina on the floor. North Carolina is listed as only having one police department participating.

But, again, these are 1992 figures, and my guess is the 1993 figures will show higher numbers than that. I ask unanimous consent to have the full report printed in the RECORD, the report from the FBI.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

1992 HATE CRIMES

Data compiled by the FBI's Uniform Crime Reporting Program reveal that most hate crimes reported to law enforcement are motivated by racial bias. The data were reported by 6,180 law enforcement agencies in 41 States and the District of Columbia; which cover 53 percent of the U.S. population. The number of law enforcement agencies participating in the FBI's statistical program, which was initiated in response to the Hate Crime Statistics Act of 1990, grew by 123 percent when compared to the number of agencies reporting in 1991.

Racial bias motivated 6 of every 10 hate crimes reported in 1992; religious bias, 2 of every 10; and ethnic and sexual-orientation bias each, 1 of every 10. Among the specific bias types, antiblack offenses accounted for the highest proportion, 36 percent, followed by antiwhite and anti-Jewish motivations, 21 and 13 percent, respectively.

CRIMES COMMITTED

Among the 8,918 racially motivated offenses, intimidation was the most frequently reported hate crime, accounting for 37 percent of the total. Destruction/damage/vandalism of property followed with 23 percent; simple assault, 20 percent; aggravated assault, 16 percent; and robbery, 2 percent. The remaining offense types (murder, forcible rape, burglary, larceny-theft, motor vehicle theft, and arson) each accounted for 1 percent or less of the total.

OFFENDERS

In 38 percent of the incidents reported, information concerning the offenders was unknown. However, for incidents in which the suspected race of the offender was reported, 64 percent of the hate crimes were committed by whites, 33 percent by blacks, and 1 percent by persons of other races. The remaining incidents were committed by groups in which the offenders were not all of the same race.

HATE CRIME BIAS-MOTIVATIONS REPORTED, 1992 [1]

Bias-motivation	Number	Percent [2]
Race	5,050	62.5
Anti-White	1,664	20.6
Anti-Black	2,882	35.7
Anti-American Indian/Alaskan Native	31	.4
Anti-Asian/Pacific Islander	275	3.4
Anti-Multi-racial group	198	2.5
Ethnicity	841	10.4
Anti-Hispanic	498	6.2
Anti-other ethnicity/national origin	343	4.2
Religion	1,240	15.4
Anti-Jewish	1,084	13.4
Anti-Catholic	18	.2
Anti-Protestant	29	.4
Anti-Islamic (Moslem)	17	.2
Anti-other religion	77	1.0
Anti-Multi-religious group	14	.2
Anti-atheism/agnosticism/et cetera	1	0
Sexual orientation	944	11.7
Anti-male homosexual (gay)	667	8.3
Anti-female homosexual (lesbian)	129	1.6
Anti-Homosexual (gay and lesbian)	132	1.6
Anti-Heterosexual	13	.2
Anti-Bisexual	3	0
Total	8,075	100.0

[1] No detailed breakdowns for bias motivations were reported from Minnesota and Pennsylvania.
[2] Because of rounding, percentages may not add to totals.

NUMBER OF HATE CRIME OFFENSES, 1992 [1]

Offense	Number	Percent [2]
Murder	17	0.2
Forcible rape	8	.1
Robbery	172	1.9
Aggravated assault	1,431	16.0
Burglary	69	.8
Larceny-theft	36	.4
Motor vehicle theft	5	0
Arson	47	.5
Simple assault	1,765	19.8
Intimidation	3,328	37.3

NUMBER OF HATE CRIME OFFENSES, 1992 [1]—Continued

Offense	Number	Percent [2]
Destruction/damage/vandalism of property	2,040	22.9
Total number of offense types	8,918	100.0

[1] Includes Minnesota and Pennsylvania.
[2] Because of rounding, percentages do not add to total.

SUSPECTED RACE OF OFFENDERS IN HATE CRIMES, 1992

Suspected race of offender	Number of incidents	Percent
White	2,919	39.2
Black	1,495	20.1
American Indian/Alaskan Native	28	.4
Asian/Pacific Islander	45	.6
Multi-racial group	104	1.4
Unknown	2,851	38.3
Total incidents	7,442	100.0

AGENCY PARTICIPATION IN HATE CRIME, 1992

State	Agencies participating [1]	Incidents reported
Alabama	4	4
Arizona	90	172
Arkansas	183	37
California	7	75
Colorado	197	258
Connecticut	23	62
Delaware	57	47
District of Columbia	1	14
Florida	374	334
Georgia	4	66
Idaho	115	54
Illinois	620	241
Indiana	5	19
Iowa	189	37
Kansas	2	3
Kentucky	2	5
Louisiana	10	13
Maine	9	19
Maryland	156	484
Massachusetts	158	424
Michigan	454	122
Minnesota	69	411
Mississippi	1	0
Missouri	17	158
Nevada	3	23
New Jersey	291	1,114
New York	569	1,112
North Carolina	1	1
North Dakota	1	1
Ohio	26	105
Oklahoma	9	147
Oregon	279	351
Pennsylvania	944	432
Rhode Island	44	48
South Carolina	4	4
Tennessee	2	4
Texas	870	486
Utah	9	12
Virginia	24	102
Washington	207	374
Wisconsin	145	67
Wyoming	5	0
Total	6,180	7,442

[1] Includes agencies participating in Program whether or not any incidents were experienced.

Mr. SIMON. Madam President, we are at the hour of 2:45 and I yield the floor.

NATIONAL COMPETITIVENESS ACT

The Senate continued with the consideration of the bill.

VOTE ON AMENDMENT NO. 1497

The PRESIDING OFFICER. The question occurs on amendment 1497 offered by the Senator from Idaho. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Delaware [Mr. BIDEN], the Senator from Colorado [Mr. CAMPBELL], the Senator from Connecticut [Mr. DODD], the Senator from Iowa [Mr. HARKIN], the Senator from Massachu-

setts [Mr. KENNEDY], the Senator from Ohio [Mr. METZENBAUM], the Senator from Maryland [Ms. MIKULSKI], and the Senator from Pennsylvania [Mr. WOFFORD] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Maine [Mr. COHEN], the Senator from New Mexico [Mr. DOMENICI], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Texas [Mr. GRAMM], the Senator from New Hampshire [Mr. GREGG], the Senator from Oregon [Mr. HATFIELD], the Senator from Vermont [Mr. JEFFORDS], the Senator from Florida [Mr. MACK], the Senator from Oklahoma [Mr. NICKLES], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote "yea."

The PRESIDING OFFICER (Mr. PRYOR). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 82, nays 0, as follows:

[Rollcall Vote No. 57 Leg.]

YEAS—82

Akaka	Feingold	Mitchell
Baucus	Feinstein	Moseley-Braun
Bennett	Ford	Moynihan
Bingaman	Glenn	Murkowski
Bond	Gorton	Murray
Boren	Graham	Nunn
Boxer	Grassley	Packwood
Bradley	Hatch	Pell
Breaux	Heflin	Pressler
Brown	Helms	Pryor
Bryan	Hollings	Reid
Bumpers	Hutchison	Riegle
Burns	Inouye	Robb
Byrd	Johnston	Rockefeller
Chafee	Kassebaum	Roth
Coats	Kempthorne	Sarbanes
Cochran	Kerrey	Sasser
Conrad	Kerry	Shelby
Coverdell	Kohl	Simon
Craig	Lautenberg	Simpson
D'Amato	Leahy	Smith
Danforth	Levin	Specter
Daschle	Lieberman	Stevens
DeConcini	Lott	Thurmond
Dole	Lugar	Warner
Dorgan	Mathews	Wellstone
Exon	McCain	
Faircloth	McConnell	

NAYS—0

NOT VOTING—18

Biden	Gramm	Mack
Campbell	Gregg	Metzenbaum
Cohen	Harkin	Mikulski
Dodd	Hatfield	Nickles
Domenici	Jeffords	Wallop
Durenberger	Kennedy	Wofford

So the amendment (No. 1497) was agreed to.

Mr. KEMPTHORNE. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1496

The PRESIDING OFFICER. The pending question before the Senate is the amendment offered by the Senator from Colorado [Mr. BROWN] amendment No. 1496.

Mr. HOLLINGS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that I may speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANTIREDLINING IN INSURANCE

Mr. FEINGOLD. Mr. President, I am going to speak briefly this afternoon about a piece of legislation that I introduced yesterday S. 1917, the Anti-Redlining in Insurance Disclosure Act of 1994.

This bill is designed to address the longstanding problem involving discrimination in the insurance industry which effectively denies millions of Americans access to affordable or adequate insurance for their homes and businesses—a practice better known as insurance redlining.

Historically the term has been associated with certain discriminatory practices carried out by lending institutions which drew lines on maps in red ink around communities that they did not want to provide their respective financial services to—typically home or small business loans. These redlined areas were generally comprised of neighborhoods in which large or growing numbers of minority residents lived. For years similar practices were carried out by some members of the insurance industry and more recently similar results have been achieved by more subtle industry practices which leave many residents of poor or minority communities without access to adequate or affordable property insurance.

Sadly enough, the decision on who gets insurance and what type of coverage they will receive based solely on the color of an applicant's skin or the neighborhood in which that person lives has taken place for some time now. It is a problem which has been discussed and examined by public officials as far back as 25 years ago.

The problem of insurance redlining is pervasive and strikes at the core of the ability of many Americans to participate fully in our society by being able to enjoy that which has come to be known as the American dream—home ownership.

The consequences associated with the inability of individuals and entire neighborhoods to obtain property insurance was probably best described by the national advisory panel on insurance in riot affected areas in 1968 when it observed as follows:

> Insurance is essential to revitalize our cities. It is a cornerstone of credit. Without insurance banks and other financial institutions will not and cannot make loans. New housing cannot be constructed and existing housing cannot be repaired.
>
> New businesses cannot be opened and existing businesses cannot expand, or even survive. Without insurance buildings are left to deteriorate; services, goods and jobs diminish; efforts to rebuild our Nation's inner cities cannot move forward. Communities without insurance are communities without hope.

This statement was made over 25 years ago and unfortunately, still accurately reflects the situation in many of our Nation's inner-city neighborhoods.

Study after study since then including the 1979 report of the Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin advisory committees to the U.S. Commission on Civil Rights, "Insurance Redlining, Fact Not Fiction" and the recent study on home insurance in 14 U.S. cities released by the community advocacy group ACORN, have reaffirmed the extent of this problem and the inadequacy of State and Federal responses to address it.

These studies and recent reports have also indicated that entire neighborhoods are continuing to be denied or provided inferior insurance coverage and that insurance redlining practices are currently widespread throughout the United States. It is not only disturbing that discrimination continues to exist today, but it troubles me even more so that the fine city of Milwaukee, WI has received national attention regarding this problem. In fact, a CNN television report even stated that Milwaukee is becoming famous not only for beer, but for insurance discrimination.

And if you think that the lack of adequate insurance that is available in many of these neighborhoods is driven solely on sound principles of economics and statistically based risk assessments—and not on principles of prejudice—you may be as surprised and outraged as I was when I first learned of the actions of one district sales manager of a large insurance company which serves the Milwaukee area community that were reported in the media and presented in testimony before the House Subcommittee on Consumer Credit and Insurance. The impact that prejudice can sometimes have on the decisionmaking process on who should and who should not be written homeowner policies was evidenced by the tape recorded advice given to several insurance agents by their sales manager. This sales manager was recorded saying:

> Very honestly, I think you write too many blacks. You gotta sell good, solid premium paying white people. They own their homes, the white works. Very honestly, black people will buy anything that looks good right now, but when it comes to pay for it next time, you're not going to get your money out of them. The only way you're going to correct your persistency is get away from blacks.

This "quit writing all those blacks" prejudicial policy was not only commu-

nicated to agents verbally, but was placed in writing as well. And it has been reported that the manager even showed one agent how to accomplish this goal by stating that "if a black wants insurance, you don't have to say, just tell them, because based on this kind of policy, the company will only allow me to accept an annual premium. Do it that way."

Activity of this type that has prompted such allegations of discrimination in the insurance industry cannot and must not be tolerated anywhere in our society. We must now take steps to remedy the situation so that the actions of a few do not discredit the rest of the citizens of Milwaukee, our Nation, or the majority of the insurance industry.

It is an insult to the millions of Americans of color who take pride in home ownership and make their payments each month for certain decisionmakers to simply write them off by assuming that minorities are a greater risk or too risky to insure. Not only does this type of thinking prevent many hard working individuals of all means the chance to own a home or start up a business, but it flies in the face of the evidence and adds to urban decay as well. In fact, data comparing low-income minority areas with low-income white areas collected from insurers in St. Louis and Kansas City by the Missouri Insurance Department showed that low-income minorities on average paid higher premiums for homeowners insurance than white homeowners of similar means for comparable coverage, even though losses were lower in the minority areas. What are the chances for a section of a city to ever rebound or be revitalized if individuals who are committed to turning things around are not given a chance and allowed to become insured and thus enabled to purchase a home or create jobs by opening a small business?

It is important that we place people of all races and ethnic backgrounds on a level playing field when it comes to the opportunity to purchase insurance. It is difficult enough these days for anyone to be able to afford to buy a home, and is even more difficult, if not impossible, to purchase one without homeowner insurance. Expanding home ownership is critical to any effort our Nation undertakes to turn around our cities. We must remove all barriers such as this type of discrimination in order to fulfill any urban revitalization goals.

The Anti-Redlining in Insurance Disclosure Act of 1994 would, among other things, give Federal agencies and affected individuals the ability to detect and address effectively the problem of insurance redlining and enforce the antidiscrimination provisions of the Fair Housing Act.

The disclosure requirements found in this bill are patterned after those found in the Home Mortgage Disclosure Act [HMDA] which require financial institutions to report their lending activities along census tract lines. The only burden faced by insurance companies that are in compliance with the Fair Housing Act law that will be imposed by these requirements will be the costs associated with the collection and reporting of the data. Banks, savings associations, and credit unions have been able to meet the similar requirements under HMDA by using in-house software programs and outside services to convert address information to census tract form. The bill takes these costs concerns into account by requiring the Secretary of HUD to make software to make such conversions available to insurers at cost.

After three decades of research, it is time that our Nation take concrete steps to end discrimination in the insurance industry. The Nation was first made aware of insurance redlining practices after studies following the riots of the 1960's and the problem has reemerged as a national concern primarily because of the aftermath of the 1991 Los Angeles riots. It is unfortunate that such tragedies must occur in order for the Nation to take notice of the problem and look for solutions. And it is a shame that three decades of research showing that there is an insurance crisis in many of our Nation's communities has gone unheeded.

Especially in light of the fact that in this same period of time we have required banks, and other lending institutions to provide housing-related credit in a nondiscriminatory fashion by enacting the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1975, and the disclosure requirements found in the Home Mortgage Disclosure Act, and even require that lenders have an affirmative obligation to lend in all the communities they are chartered to serve, including low and moderate-income neighborhoods through the Community Reinvestment Act of 1977.

Our experience with the Home Mortgage Disclosure Act has shown that the public disclosure of this type of information can serve multiple purposes in combating insurance discrimination by. allowing for an accurate assessment of the extent and nature of the problem; and by assisting affected individuals and State and Federal regulators in the enforcement of antidiscrimination laws. Such disclosure can also stimulate self corrective policies by the industry itself by bringing to light the disparate impact of certain industry policies.

Unfortunately, we can pass all of the laws that we want in order to make discriminatory activities illegal—but none will ensure that such practices will go away. Unequal treatment of individuals solely on the basis of the color of their skin will not disappear because a law is enacted making it illegal. But the law does enable people whose rights are violated to seek redress and punish those who violate these rights through the legal system. And the law also symbolizes our consensus to condemn and eliminate this invidious discrimination. The antiredlining in the Insurance Disclosure Act of 1994 will help achieve both of these purposes.

I am also interested in exploring suggestions that have been made that the insurance industry ought to be subjected to the same requirements that are imposed upon the banking industry under the Community Reinvestment Act. Just as the banking community is required to address the credit needs of all communities, we should consider whether the insurance industry ought to be asked to make a similar effort to make affordable insurance accessible to the residents of those communities as well.

Finally, I would also like to thank key Members of the other body, Representatives JOSEPH KENNEDY and CARDISS COLLINS, for bringing the issue of insurance redlining to the attention of Congress. Through their respective subcommittees, information has been gathered that documents the problems of insurance redlining and its consequences for millions of Americans, who are denied insurance or forced to pay higher premiums for lower coverage. My colleague from Wisconsin, Representative TOM BARRETT, has also been deeply involved in this issue and chaired a hearing in Milwaukee on January 4, which focused on these problems. Representative BARRETT was actively involved in efforts to combat discrimination when we both served in the Wisconsin Legislature and I am pleased to have the opportunity to work with him again on these important issues.

The bill I have introduced today is modeled after H.R. 1257, as it was reported out of the House Banking Committee, since it requires the disclosure of data along more well defined census tract lines rather than by ZIP Code. This method follows the requirements made by the Home Mortgage Disclosure Act and provides for the reporting of data that is more useful for disclosing patterns of discrimination, since many urban ZIP Codes contain neighborhoods that have a diverse range of economic, racial, and housing stock characteristics.

As I noted yesterday, the administration has signaled its support for legislation which would address the problem of insurance redlining and there are a number of community organizations supporting this bill as well, including:

The Alliance to End Childhood Lead Poisoning.

The American Planning Association.

The Association of Community Organizations for Reform Now [ACORN].

The Center for Community Change.
The Consumer Federation of America.
Consumers Union.
The National Council of La Raza.
The National Fair Housing Alliance.
The National Insurance Consumer Organization.
The National League of Cities.
The National Low Income Housing Coalition.
The National Neighborhood Coalition.
Network: a National Catholic Social Justice Lobby.
Public Citizen's Congress Watch, and
The United Methodist Church, General Board of Church and Society.

I look forward to working with all of my colleagues and the administration in making sure that we do all that we can to end the practice of insurance discrimination.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MATHEWS). Without objection, it is so ordered.

NATIONAL COMPETITIVENESS ACT

AMENDMENT NO. 1489

Mr. DECONCINI. Mr. President, last evening, during the floor debate on S. 4, the National Competitiveness Act, Senator COHEN offered an amendment to insert the provisions of S. 1869, the Counterintelligence Improvements Act of 1994 in their entirety into the bill. The amendment was agreed to by voice vote.

Although S. 1869 had been referred to this committee, we received no prior notice that this amendment was to be offered nor did we learn that it had been accepted until after the fact. The committee was in closed session at the time taking testimony from the Director of Central Intelligence.

While we appreciate what motivated Senator COHEN to offer his amendment as well as what motivated the managers to accept it, it is simply premature, in our view, to go forward with this legislation at this time and in this manner.

Since the Ames case was made public, the Select Committee on Intelligence has been heavily involved in assessing what went wrong and what needs to be done to fix it. While Senator COHEN's bill—which incorporates the recommendations made by the so-called Jacobs' panel in 1990—contains several worthwhile provisions, we think it can be improved upon in a number of respects. It also appears likely, based on our discussions to date with the administration, that it would oppose several of the Jacobs proposals as they are now drafted.

We intend to introduce a new bill in the next few days which incorporates the best features of the Cohen bill and improves upon them. Our proposal will also include provisions not in the Cohen bill which are suggested by the facts of the Ames case. Public hearings will be held on the bill, with the objectives of reporting out a comprehensive proposal later this session which has the support of the administration.

Mr. President, I simply want to assure my colleagues on both sides of the aisle that the Intelligence Committee is fully engaged here and will be coming forward in due course to the Senate as a whole with legislative recommendations to deal with the problems evident in the Ames case. But we must be given an opportunity to do our work in a thoughtful, orderly way. Senator COHEN is right when he says we need to act. There are clearly some things that are broken. I only ask that our process be given a chance to work.

NICKLES AMENDMENT NO. 1485

Mr. GLENN. Mr. President, 2 days ago, the Senate accepted an amendment to S. 4, the National Competitiveness Act, offered by Senator NICKLES and entitled the "Economic and Employment Impact Act." This amendment would require the Congressional Budget Office [CBO] to conduct far-ranging cost impact analyses of all bills considered by either House of Congress. The amendment would also require agencies to conduct those analyses of all regulatory actions.

In opposing the amendment I argued, and will point out again, that this proposal will be an impediment to the already slow legislative process, will require uncertain and unverifiable projections of future possible costs, will necessitate the allocation of additional CBO resources, and will require agencies to conduct a narrowly focused regulatory analysis in a manner much more narrowly than that already required by Presidential Executive order. Then and now, I do not argue against legislative or regulatory analysis, but just that this amendment is not the way to provide for such analysis.

I rise today, however, not to detail again my various concerns about the Nickles amendment, but for the simple purpose of offering for my colleagues' review, a letter dated March 10, 1994, from CBO Director, Robert Reischauer. This letter confirms my concern about the resources CBO would have to devote to this analysis, and that those resources are not available. Mr. Reischauer writes:

> Without having done a complete analysis of all the requirements imposed on CBO by the Nickles Amendment, our preliminary estimate is that we would have to increase our workforce by about 80 percent of the size of the [CBO] Budget Analysis Division, or around 60 people. Applying this same proportion to the Budget Analysis Division's proposed budget for 1995, the total cost of additional resources required by CBO would amount to $6,200,000, at a minimum.

After describing in more detail what the needed $6.2 million would cover, Mr. Reischauer puts it quite simply: "To implement the Nickles amendment, CBO will need a 1995 budget increase of more than 30 percent."

This letter, which I ask unanimous consent to be included in the RECORD, following my remarks, clearly sets out the bottom-line. And I see nothing from the proponents of the amendment to indicate that any of these needed resources will be forthcoming. For this reason alone, I urge that the Nickles amendment be struck in conference.

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 10, 1994.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for information relating to the amount of additional resources the Congressional Budget Office would need to carry out the provisions of the Nickles Amendment to S. 4, the Competitiveness Act of 1994.

The Nickles Amendment requires CBO to prepare economic and employment impact estimates to accompany each bill or resolution reported by any committee of the House or Senate or considered on the floor of either House. These impact statements are supposed to estimate the costs to individuals, consumers, businesses, and state and local governments.

As required by the Congressional Budget and Impoundment Act of 1974, CBO already provides five-year federal budget cost estimates for virtually every public bill reported by legislative committees in the House and Senate. Official bill cost estimates average about 700 per year. Additionally, CBO is required to review bills to identify their potential impact on state and local governments. For the last ten years, we have prepared more than 600 state and local cost estimates per year.

The bulk of this work is done in our Budget Analysis Division which, with 75 employees, is the largest of CBO's seven divisions. Without having done a complete analysis of all of the requirements imposed on CBO by the Nickles Amendment, our preliminary estimate is that we would have to increase our workforce by about 80 percent of the size of the Budget Analysis Division, or around 60 people. Applying this same proportion to the Budget Analysis Division's proposed budget for 1995, the total cost of additional resources required by CBO would amount to $6,200,000, at a minimum.

The additional $6.2 million breaks down as follows:

$5 million in payroll and benefit costs for an additional 60 analysts;

$640,000 to cover increased ADP timesharing and model development costs;

$350,000 for additional computer hardware and software purchases;

$170,000 in increased central support costs, including additional telephones and office supplies and equipment and the like.

I emphasize that this is the minimum additional amount needed to cover a 60-person increase in CBO's staff size because it fails to include any provision for necessary increases in computer support staff or other administrative staff. This is a 27 percent increase in CBO's current staff size and obviously would have a significant impact upon administrative services.

To implement the Nickles Amendment, CBO will need a 1995 budget increase of more than 30%. CBO's current request is less than CBO's baseline projection for the agency. Ad-

ditionally, the amendment creates logistics and timing problems. CBO currently occupies nearly the entire 4th floor of the Ford House Office Building. To accommodate an additional 60 employees, CBO would need a full wing of an additional floor of the building. Also, the Nickles Amendment calls for implementation 30 days after enactment. It would be nearly impossible to staff to the required level in that time. Finally, this estimate does not include any increase that would be required in CBO's 1994 budget nor has relief been granted CBO from current law requiring a four percent reduction in legislative branch staffing.

This is a very preliminary analysis of the Nickles Amendment's impact on CBO. It represents a minimum increase, however, in the amount of additional resources CBO would need to carry out those provisions.

I hope this information is useful. I would be happy to discuss further this matter with you or your staff.

Sincerely,

ROBERT D. REISCHAUER,
Director.

UNANIMOUS-CONSENT AGREEMENT—CLOTURE VOTE ON COMMITTEE SUBSTITUTE TO S. 4

Mr. MITCHELL. Mr. President, I ask unanimous consent that the first cloture vote on the committee substitute for S. 4 occur at 10 a.m. on Tuesday, March 15; and that if a third cloture motion is filed on Tuesday, it be deemed to mature on Wednesday, March 16, and that the mandatory live quorums be waived.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I now ask unanimous consent that there be a period for morning business, with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO CHARLES CLULEE

Mr. LIEBERMAN. Mr. President, I rise to honor the memory of a man who was a living repository of history in the town of Wallingford, CT. Charles Clulee, who passed away on February 21 at the age of 87, was Wallingford's town historian emeritus, and he leaves a long history of his own—a history filled with kindness, humor, and a desire to honor the past in a way that guides us to a better future.

Through lectures, maps, pictures, tours, and anecdotes, Charles Clulee helped generations of young people learn more about people and times gone by, and provided a strong link between Wallingford and Connecticut's rich past and fast-changing present. One of those people was my director of communications, Jim Kennedy, who had the honor of knowing Charles Clulee, and who received as a gift from him a 19th century map of Wallingford, which now hangs on a wall of my office.

It has been said that "History is the ship carrying living memories to the future." For the people of Wallingford, Charles Clulee was for many years the captain of that ship. Now, he has become part of the great legacy that is Wallingford's history, and we can only hope that others will follow his example and keep his memory alive so that future generations can know what a wonderful man he was.

Mr. President, I would like to insert in the RECORD of this Chamber an article about Charles Clulee by Mary Kay Melvin that appeared in the Record-Journal newspaper on February 23, 1994.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CLULEE HAD HISTORY OF DEDICATION TO TOWN

WALLINGFORD.—He immersed himself in the history of Wallingford for more than 30 years, but Charles Clulee did not live in the past.

Even at age 87, Clulee amazed caretaker Doris Pierce with his energy and love of life.

Clulee, a Wallingford native, was the town historian for several years and became town historian emeritus two years ago. He died Monday after falling and breaking his hip.

Clulee hired Pierce, a certified nursing assistant, seven years ago to help care for his wife, Mary. Since Mrs. Clulee's death, Pierce and her husband, Ken, have cared for Clulee. The Pierces moved into Clulee's house almost four years ago.

Many times, Pierce would rise and find Clulee sitting at the kitchen table with his hat on.

Depending on the weather, Pierce recalled, Clulee would say, "Aren't we going out, hon? It's such a dreary day, I think we should go out."

And out they went. Clulee was a big fan of local breakfast restaurants and a regular at New Haven's Blake Street Cafe 500, where he would eat lunch at least once a week.

Many of the restaurant's patrons knew Clulee, said Kevin Langan, a Blake Street Cafe 500 employee. Clulee had his own table there, and framed newspaper articles featuring Clulee were hung on the restaurant walls.

"Oh, he was such a kind and generous man," said Pierce, who was especially touched by Clulee's energy and sense of humor.

Wherever the trio traveled, Pierce said, Clulee would buy something so he would remember the experience.

"He was always collecting," she said. "He was a definite pack rat."

Clulee's penchant for collecting dates back to the early 1960s, when he returned to Wallingford after he retired as a merchandising manager from Sears Roebuck and Co., in New York and Chicago.

Clulee collected stamps and then postcards, old books, pictures, maps, newspaper clippings and city directories.

Clulee found his post-retirement calling at the Wallingford Historical Society, where he served as president. He developed a passion about Wallingford.

The historical society's headquarters is across the street from Clulee's house, where he was born and raised. The house was built by his grandfather in 1886.

"He was on the forefront of a lot of things," said Mary Annis, past president of the historical society.

Annis, who met Clulee through the historical society in the early 1970s, said Clulee developed many of the organization's outreach programs. For several years, he invited Wallingford teachers to seminars at the society's headquarters in the Samuel Parsons House.

He also offered annual tours of the house for elementary school pupils, she said.

"There will be a void," Annis said. "I don't know if there are very many people who knew Wallingford the way he did."

Clulee could answer questions off the top of his head, Annis said.

"He will be missed, of course," she said.

Johanna Fishbein met Clulee during preparations for the town's 300th birthday in 1970. The two have worked on many projects, including development of a speakers bureau for the country's bicentennial.

"Wallingford was his big thing," said Fishbein, adding that much of Clulee's interest stemmed from his ties to Wallingford's past.

Clulee's mother was of the Jones family, which dates to William Jones, deputy governor of the New Haven Colony in the 1600s.

Clulee was expected to serve as grand marshal of the town's 325th anniversary in 1995.

"I especially wanted him to because Charlie was our historian emeritus," Fishbein said.

Several years ago, Clulee donated much of his memorabilia to the Wallingford Public Library, according to Leslie Scherer, a co-director. He made similar donations to the Wallingford Historical Society and Choate Rosemary Hall.

Clulee also created an endowment that allows library officials to add to its historical collection. For example, the library recently transferred information from the town's old city directories onto microfilm, Scherer said.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, as of the close of business on Thursday, March 10, the Federal debt stood at $4,546,800,625,410.70, meaning that on a per capita basis, every man, woman, and child in America owes $17,440.00 as his or her share of that debt.

STATEMENT ON THE CONFIRMATION OF JOHN J. LEYDEN AS U.S. MARSHAL FOR RHODE ISLAND

Mr. PELL. Mr. President. Yesterday, Thursday, March 10, the Senate confirmed Chief John J. Leyden of North Kingstown, RI, as the U.S. marshal for the District of Rhode Island.

I welcome this confirmation and look forward to the leadership and skills that Chief Leyden will bring to his tenure in office as marshal in Rhode Island. His record in law enforcement has been impeccable, spanning 37 years and encompassing virtually every aspect of police work, from routine patrol work, to investigation, to personnel and departmental administration. He currently serves as the chief of police and public safety director for the town of

North Kingstown in Rhode Island, a position in which he has performed with distinction for over 10 years. Perhaps most indicative of the general regard in which he is held, is the near universal acclamation his consideration and nomination by President Clinton has met. I am confident that his service will do honor to Rhode Island and the country.

Again I am pleased that the Senate has chosen to confirm Chief Leyden, I extend my best wishes as he begins his work in this position, and look forward to working with him in the delivery of law enforcement services to Rhode Island.

COST ESTIMATE ACCOMPANYING S. 208

Mr. JOHNSTON. Mr. President, on February 11, 1994, the Committee on Energy and Natural Resources filed its report accompanying S. 208, the National Park Service Concessions Policy Reform Act of 1994 (S. Rept. 103-226). S. 208 is now pending on the Senate Calendar (Calendar No. 369). At the time the report was filed, the cost estimate prepared by the Congressional Budget Office had not been completed. The cost estimate has now been transmitted to the committee, and I ask unanimous consent that it be printed in the CONGRESSIONAL RECORD immediately following this statement.

There being no objection, the estimate was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 9, 1994.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 208, the National Park Service Concessions Policy Reform Act of 1994.

Enactment of S. 208 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 208.

2. Bill title: The National Park Service Concessions Policy Reform Act of 1994.

3. Bill status: As reported by the Senate Committee on Energy and Natural Resources on February 11, 1994.

4. Bill purpose: S. 208 would repeal the Concessions Policy Act of 1965 and replace it with new federal policies to govern the process by which the National Park Service (NPS) contracts for visitor facilities and services. The bill would codify existing NPS practices that:

Require concessions contracts to be subject to a competitive bidding process; and

Require contractors to depreciate the value of their "possessory interest" in assets constructed on public lands.

In addition, the bill would direct the NPS, wherever practicable, to require concessionaires to deposit all or a portion of their franchise fee obligations into park improvement funds rather than into the U.S. Treasury. Amounts deposited to such funds, including interest earnings, would be spent by the contractor on activities and projects within the park as directed by NPS.

Any franchise fees not paid to park improvement funds would be deposited into a special fund in the U.S. Treasury. (Currently, such amounts are deposited to the general fund.) These amounts would be available, subject to appropriation, for resource management and other park uses.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998	1999
Estimated budget authority	.....	4	9	15	22	32
Estimated outlays	.....	2	6	11	17	26

The costs of this bill fall within budget function 300.

Basis of estimate: CBO estimates that enactment of S. 208 would increase direct spending by about $2 million in fiscal year 1995, rising to about $26 million annually in 1999. The increase in mandatory spending represents CBO's estimate of amounts that would be spent by concessionaires from new park improvement funds authorized by section 8. Because these funds would be controlled by the NPS, their expenditures should be considered government outlays for budget purposes.

In preparing this estimate, CBO has assumed that the NPS would phase park improvement fund requirements into most major new or renewed concessions contracts as the existing agreements expire over the next five years. We estimate that by 1999 fully 90 percent of all franchise fees would be paid to the new funds, reducing deposits to the U.S. Treasury from $35 million to about $3 million annually by that time. No decrease in offsetting receipts is shown in the table for this reduction, however, because deposits to the federally controlled park improvement funds should still be considered federal receipts. Outlays from the park improvement funds have been estimated on the basis of spending patterns for similar activities and projects at national parks.

Other provisions of S. 208 would merely codify existing NPS policies and would therefore have no impact on the federal budget.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of S. 208 would increase direct spending by $2 million in fiscal year 1995, $6 million in 1996, $11 million in 1997, and $17 million in 1998.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Deborah Reis.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

TRIBUTE TO MICHAEL NOVAK

Mr. MOYNIHAN. Mr. President, it is with great pleasure that I rise today to recognize the achievements of one of America's most brilliant theologians, Michael Novak. On Tuesday of this week, Mr. Novak was awarded the 1994 Templeton Prize for Progress in Religion, an award comparable to the Nobel Prize.

Now a scholar at the American Enterprise Institute, he has long communicated the idea that free market capitalism is of greater economic benefit to the world's poor than is the socialist system.

His work has received worldwide praise, and now recognition.

Mr. President, at this time I ask that my statement and the following article from this past Wednesday's New York Times be submitted into the RECORD.

[From the New York Times, Mar. 9, 1994]

$1 MILLION RELIGION PRIZE FOR CAPITALISM DEFENDER

(By Peter Steinfels)

Michael Novak, a scholar known for formulating a theological defense of capitalism, has won a prize of nearly $1 million established by one of capitalism's most successful practitioners.

Mr. Novak, whose religious arguments linking democracy and capitalism influenced opinion in Eastern Europe and are echoed in Pope John Paul II's writings, was named the winner yesterday of the 1994 Templeton Prize for Progress in Religion.

The prize, created 22 years ago by Sir John M. Templeton, an American-born British subject who is widely considered the dean of global investing, honors a person judged to have advanced the world's understanding of religion. Valued at £650,000—$968,500 at yesterday's exchange rate—the prize will be awarded by Prince Philip at Buckingham Palace on May 4.

Sir John, who is active in the Presbyterian church, stipulated that the prize money should always surpass that of the Nobel Prizes, which he felt had overlooked religion. He sold his money management firm, Templeton, Galbraith & Hansberger, for $913 million in 1992 and now, at the age of 81, lives in the Bahamas.

Previous winners include Mother Teresa and the Rev. Billy Graham. Last year's winner was Charles W. Colson, the former special counsel to President Richard M. Nixon who established a prison ministry after serving seven months for his role in the Watergate cover-up.

Mr. Novak, a 60-year-old Roman Catholic who once studied for the priesthood, was a proponent of many of the changes in Catholic teachings and practices introduced by the Second Vatican council, which he covered on special assignment for Time magazine in 1963. He was an outspoken opponent of the war in Vietnam while teaching religious studies at Stanford University in the mid-1960's.

In the 1970's, when he also taught at the State University of New York at Old Westbury, L.I., and at Syracuse University, Mr. Novak moved into the ranks of neoconservative thinkers and politicians. In 1978, he became a resident scholar in religion and public policy at the conservative American Enterprise Institute in Washington.

Encountering opposition to capitalism in politically active religious circles, Mr. Novak in 1982 wrote "The Spirit of Democratic Capitalism" (Simon & Schuster) arguing that capitalism and democracy were mutually supportive embodiments of Christian principles. He also wrote several books criti-

cizing the socialist elements in Latin American liberation theology.

Drawing bitter criticism from many of his former liberal allies in the church, Mr. Novak also organized opposition to the American Catholic bishops' pastoral letters on nuclear weapons and on the economy in the mid-1980's. At a news conference yesterday in Manhattan, he said he had largely agreed with the bishops' final versions of those documents.

In her memoirs, Margaret Thatcher, the former British Prime Minister, said Mr. Novak's writings had influenced her views on "quality of life" issues. Lady Thatcher served on the nine-member panel of judges who awarded the prize. The panel also included James Billington, the Librarian of Congress, and George Gallup Jr., the pollster.

Mr. Novak said he would use much of the prize money to finance scholarships at colleges where he studied and to support Crisis, the conservative Catholic monthly that he edits.

Asked about the New Testament's warnings against riches, Mr. Novak replied, "The more you have, the stricter your judgment will be, and the more you are responsible for."

Sir John, who attended the news conference, added, "I just hope we haven't kept Michael out of the kingdom of heaven."

TRIBUTE TO DR. ALVIN C. POWELEIT—HONORING A KENTUCKIAN'S HEROISM AND PROFESSIONAL LIFE

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to a distinguished Kentucky gentleman and a personal friend. Dr. Alvin C. Poweleit of Newport, KY, has lived a full life, distinguished by its honor, heroism, and dedication to helping those in need.

Dr. Poweleit's outstanding service began during World War II when as a member of Kentucky's Fighting 192d Light G.H.Q. Tank Battalion he served as the battalion surgeon. As a member of one of the most valiant fighting forces in our Nation's history, Dr. Poweleit experienced the horrors of war firsthand. After bravely defending the battalion's position in the Philippines the 192d was overrun by the vastly superior force and numbers of the enemy.

Mr. President, Dr. Poweleit survived the Bataan death march which followed as well as an extended time in a Japanese prisoner of war camp. It was while suffering in this camp, where many prisoners lost 40 to 60 percent of their total body weight, that Dr. Poweleit made a commitment to himself that he would spend his life caring for others. This was not a commitment made without conviction.

He returned to northern Kentucky a lieutenant colonel in the Medical Corps and a highly decorated war hero. Dr. Poweleit received the Silver Star, Legion of Merit, Purple Heart, Philippine Defense Medal, and Presidential Unit Citation Medal as a result of his distinguished service in defense of America. He was the first medical officer to be decorated in World War II. He received the Legion of Merit award for heroism he displayed when he dove underneath a partially submerged burning tank to rescue two trapped soldiers.

Mr. President, Dr. Poweleit did not rest on his laurels. Remembering the promise he had made half a world away and under horrific circumstances, he dedicated his life to serving his community and helping others. As long as he has been in practice he has never refused treatment to a patient in need. Always available, Dr. Poweleit gladly dispensed treatment and compassion whenever it was needed. As he is fond of saying, "There are talkers and there are doers," and there is no doubt which category he falls under. Being a doctor is both his vocation as well as avocation.

Mr. President, Dr. Poweleit is not in practice any more but he is still remembered fondly by all who know him. As the author of many books, both about his war experiences and the northern Kentucky medical community, his legacy will live on for many years to come. But to the generations of Kentucky families whose lives he enriched and cared for he will never be replaced.

Mr. President, I ask my colleagues to join me in honoring this wonderful Kentucky gentleman and my friend, Dr. Alvin C. Poweleit.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

EMPLOYER-BASED INSURANCE

Mr. DASCHLE. Mr. President, this week we had what I consider to be a very significant development. And frankly, I am a little disappointed that it has not generated more attention in the media. I am referring to a public endorsement of employer-based insurance by more than 100 organizations—in fact, 115 to be specific—that represent labor, scores of businesses, consumers and providers companies. For example, the National Leadership Coalition for Health Care Reform, which signed the letter, includes ACME Steel; Bank South Corp.; the H.J. Heinz Corporation; Keebler Co.; Lockheed; LTV Steel; Safeway; Scott Paper; U.S. Bankcorp; and Xerox, among other companies.

All of those businesses and other national-known organizations have come forward this week to say they think the best way to achieve universal coverage is through an employer-based insurance system. I would think that would generate a tremendous amount of news. Just a couple of weeks ago the news of one or two business organizations concluding that they would not now endorse the plan proposed by the President made the front page of several national newspapers. And yet this major endorsement of a concept that has generated so much controversy has not received anything like that kind of attention.

There has been a tremendous amount of misinformation about this issue of employer-based insurance, sometimes called an employer mandate. That is why we ought to take a look at the reasons why these organizations and so many others have determined that the best way to achieve universal coverage is through shared employer-employee responsibility.

First, and perhaps most importantly, if we accept that universal coverage is our goal, a goal shared almost universally in this body, there really are not many ways to accomplish this objective.

In fact, there are only three ways. One way is to do what some of our colleagues have suggested, to create a single-payer system run entirely through Government, financed by payroll or other taxes. Someone has also suggested using a value-added tax with this approach.

The second approach proposed by many is that we require families and individuals to take on responsibility for paying for health insurance. They propose that this not be the responsibility of business, but it be completely the responsibility of families. In other words, they are proposing a family or individual mandate.

There have been a number of different analyses of the effect of a family mandate. Two that I think are most disconcerting indicated that if we were to require a family mandate, the premium would consume 17 percent of family after-tax income.

In other words, 17 percent of a family's disposable income would have to go to health care, if we were to have a family or an individual mandate.

And it gets even worse, according to another study, for those who are in the 100 to 200 percent of poverty category, 47 percent of disposable income for families in that bracket would be required to pay for health insurance if we had a family mandate.

So obviously, when one looks at the ramifications of either a tax-based system or a family mandate, there are very disconcerting financial implications that I do not believe have been considered. We hear a lot about how difficult it would be for a small business to absorb the costs associated with taking on this responsibility. But what is missing in that analysis is that it would be equally difficult for a family to take on the same responsibility. If it is hard for business, why is it not equally as hard or more difficult for a family?

Under the current system 84 percent of the uninsured live in families where the head of household is employed.

It seems to me, it is a small step to build upon the current system, where

two-thirds of employers have already readily accepted the responsibility for obtaining health coverage for their workers and where 84 percent of the uninsured live in a family where the head of household is employed. What a small step it would be compared to the radical departure it is to ask families to take on that entire responsibility.

One of the misconceptions about this shared responsibility, or the so-called employer mandate, is that the employer would take all of the responsibility. I get a lot of my businessmen who come to me and say, "I don't understand why I should shoulder the entire burden. Why can't it be a shared responsibility between employers and employees?"

When I inform them that is exactly what we are suggesting, the lights come on. An understanding of that shared responsibility is the first step to supporting a concept that I think has been misconstrued and maligned in the current debate.

That is my first point, Mr. President; that if we are going to achieve universal coverage, there are only three ways to do it: through taxes, by shifting the entire responsibility onto the family, or by asking for a shared responsibility between employers and employees.

The second point is that shared responsibility builds on a system, in place for generations. The most radical departure from tradition would be to require families to shoulder the whole burden, to require Government and the taxpayers to take on this responsibility all by themselves.

The third point is that shared responsibility avoids lost-shifting, a phenomenon that occurs all too frequently today. I think people understand how consequential cost shifting is. They have had to deal with this issue all the time. They have been able to calculate on their balance sheets that they are paying a larger share of their health costs than they ought to be. In fact, in 1991, employers with insurance paid $10 billion for medical care for people who do not have insurance. That amount came right out of business' pockets. People without insurance go to the emergency room and to the doctor's office. Although doctors and hospitals can absorb the costs temporarily, they must ultimately shift them onto the business community. And that burden, those payments for the uninsured, is carried more heavily by business than by anybody else—$10 billion in 1991 just for uncompensated care, and $26 billion covering spouses and dependents in noninsuring firms. In other words, people who take advantage of the fact that their spouses have insurance and then forgo insurance themselves, putting the entire responsibility on the employer of the insured. So, cost shifting, Mr. President, is a very serious problem and one that I hope, regardless of what else we do, we will address as we look at health reform this year.

The fourth reason why an employer-based insurance program makes sense is because we would reduce system-wide costs and according to studies done we could actually see increased employment. The Employee Benefits Research Institute estimates that we could gain 600,000 jobs if we could end cost shifting, if we could make everybody financially responsible for the care that they receive. CBO has said the President's plan would save the business community $90 billion a year between now and the year 2004.

The fifth reason why I believe this makes such good sense is that, no matter what we do, we cannot avoid a mandate. We can say that we do not want an employer mandate; that we do not want a family mandate; that we do not want any kind of mandate. And you hear that often: We should not be imposing mandates.

But such statements ignore the mandate we have right now, one that is more inequitable, more problematic, more inefficient than any of the others that have been proposed so far. Today, we have what I prefer to call a status quo mandate. Those who pay for health care are required to pay for those who do not. That is a mandate.

I do not think I would get one vote if I were to come to the floor and present a voluntary insurance proposal where anybody could sign up for insurance anywhere in the country but those who chose not to pay could simply shift their responsibilities on to those who do. But that is what we have today. That is the status quo. I do not think that is right. I hope that regardless of what we do, we all recognize that the status quo mandate, those who pay pay for those who do not, is unfair and it ought to be ended.

My last point is that the American people support shared responsibility, in poll after poll. They may be confused about what the Clinton plan does or does not do. They may have concerns about alliances and other features of the plan. But when it comes to whether or not the American people want an employer-based insurance system, it is unequivocal.

The Washington Post just last week reported that 73 percent of Americans polled support an employer-based system for full-time workers—73 percent, almost 3 out of 4; 69 percent support providing coverage for part-time workers. Just a couple of weeks ago the Wall Street Journal reported that 65 percent support an employer-based system, especially if it includes small firms. So for small business, large business, full time or part time workers, an overwhelming consensus among the American people is that we have to have an employer-based system. Maybe they already understand that if you do not have that, the only other option is to increase taxes or use a family-based mandate.

They understand the consequences of devoting 17 percent of after-tax income to health care. They know they cannot find the resources for that.

So I hope as we examine our options we will look very carefully at the ramifications of choosing some radical departure from the current system. I do not think the American people want a radical departure. I think they clearly have demonstrated their determination to see some form of shared responsibility between employers and employees alike.

I hope that we recognize these facts as we debate health reform options, and hope in the not-too-distant future we can conclude that the best approach to achieving universal coverage is employer-shared responsibility.

I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

TRIBUTE TO LAWRENCE SPIVAK

Mr. DOLE. Mr. President, on November 6, 1947, a television program called "Meet the Press" debuted on the National Broadcasting Co. network.

Almost half a century later, "Meet the Press" is still on the air, informing Americans, and asking tough questions of Presidents, Prime Ministers, Senators, and other newsmakers.

The founder of "Meet the Press," as well as its long-time host and producer was the remarkable Lawrence Spivak.

With Mr. Spivak's passing yesterday at the age of 93, American journalism has lost one of its true giants—a man known for his complete and total objectivity, professionalism, and accuracy.

Lawrence Spivak did not play favorites. No one could tell whether he was Republican or Democrat, liberal or conservative. Every guest on Mr. Spivak's "Meet the Press" knew they could expect hard but fair questions.

Thomas Jefferson once wrote that the press "is the best instrument for enlightening the mind of man, and improving him as a rational, moral, and social being."

Lawrence Spivak will always be remembered for his life-long dedication to enlightening the minds of all Americans. I know the Members of this body join with me in extending sympathies to his family and friends.

WHITEWATER HEARINGS

Mr. DOLE. Mr. President, yesterday, I delivered a letter to the distinguished majority leader expressing my hope—and I believe the hope of most Senate Republicans—that we will be able to find some way to hold public and bipartisan hearings into the so-called Whitewater affair.

On Wednesday, independent counsel Robert Fiske met with my distin-

guished colleagues, Senators D'AMATO and COHEN, to outline his concerns about how public hearings may affect his investigation.

It is certainly understandable that Mr. Fiske would want to protect his own prosecutorial turf. That is his job. But Mr. Fiske must understand that Congress has its own job to do as well.

As Charles Krauthammer pointed out in today's Washington Post, and I quote:

The prosecutor's interest is prosecution. The public interest is disclosure. The prosecutor tries to find breachers of law. The public needs to know about breachers of trust.

So, Mr. President, public hearings are not meant to supplant or second-guess Mr. Fiske's investigation. On the contrary, hearings are essential if the Senate is to fulfill its own constitutional obligation to oversee executive branch activities. Unlike Mr. Fiske, the Senate has this oversight obligation, an obligation that Mr. Fiske has himself publicly acknowledged.

And needless to say, Mr. President, public hearings offer President Clinton a valuable opportunity to remove the ethical cloud now hanging over the White House.

Of course, Senate Republicans want to cooperate with Mr. Fiske to ensure that hearings do not needlessly interfere with his investigation. And that is why we want to be both fair and flexible when it comes to the timing of the hearings and the way the hearings are structured.

First of all, there is a consensus on this side of the aisle, at least, that no witness appearing at a Whitewater hearing should be granted immunity. No immunity. Period. That is what Mr. Fiske requested, and Senate Republicans are willing to accommodate his request. As I said on Wednesday, this should solve the so-called Iran-Contra problem.

Second, we are prepared to do whatever we can to prevent the public disclosure of the contents of the RTC criminal referrals concerning Madison guaranty. Of course, preventing public disclosure will require the cooperation of our democratic colleagues, as well.

And finally, Mr. President, we are willing to give the independent counsel a little breathing room, perhaps a few weeks, to conduct his separate investigation into the recently revealed meetings involving White House, Treasury, and RTC officials.

Mr. President, I have no idea what, if anything, lies at the bottom of Whitewater, nor do I know what the Whitewater hearings may or may not disclose.

But it is becoming increasingly clear, with the daily drip-drip-drip of allegations, that hearings are the only way to put the Whitewater episode behind us so that we can move ahead to the vital issues facing our country.

And those who oppose hearings should remember this: we would not have known about the White House-Treasury-RTC meetings if Banking Committee Republicans had not used the opportunity of an RTC oversight hearing to ask Whitewater-related questions. In other words: if there had been no hearing, there would have been no disclosure and no subpoenas.

I think we ought to remember that. If there had not been that hearing, a lot of these things that are coming out now would not have been known.

Mr. President, in a poll out yesterday, a plurality of the American people want congressional hearings on this matter. The American people deserve a full accounting of Whitewater, and they deserve hearings that are conducted in a fair and bipartisan manner. Senate Republicans are willing to work with our Democrat colleagues to achieve these important goals.

Mr. President, I ask unanimous consent that the Charles Krauthammer article be reprinted in the RECORD. I also ask unanimous consent that an editorial appearing in today's Los Angeles Times, supporting the oversight role of Congress in the Whitewater matter, be reprinted in the RECORD as well.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NO IMMUNITY, NO PROBLEM

(By Charles Krauthammer)

The White House counsel has resigned under pressure. Ten Clinton aides have been subpoenaed by the Whitewater special prosecutor looking into improper contacts between the White House and independent S&L regulators. The administration has promised the urgent erection of a "fire wall" to prevent further contacts. The deputy Treasury secretary has "recused" himself from investigations that touched on the Clintons' involvement in Whitewater. In short, the White House has pledged itself to a wholesale cleanup of its Whitewater ethics.

How did all this start? With a congressional hearing.

On Feb. 24, the Senate Banking Committee held oversight hearings on the Resolution Trust Corp. It was here that Deputy Treasury Secretary Roger Altman, acting head of the RTC, revealed under questioning that he had briefed the White House counsel on the RTC investigation of Madison Guaranty, the failed Arkansas S&L to which the Clintons had numerous and questionable ties.

This was the first and, thus far, only congressional hearing on Whitewater. Without it we might still not know about the secret contacts between Clinton aides and the agency investigating the Madison bank. Even the president admitted at this press conference on Monday: "I didn't know about, for example, Roger Altman's meeting until he testified to it on the Hill."

A week after Altman's testimony, The Washington Post revealed that there had been two more such meetings. The first of these had tipped off the White House that the RTC was going to make a "criminal referral" to the Justice Department in which the Clintons were named as possible beneficiaries of Madison's possibly criminal activities.

This is not the first time that a congressional hearing has led to a cascade of other revelations. The Watergate tapes were discovered not by the press, not by prosecutors, but in the course of congressional hearings.

Republicans are now demanding Whitewater hearings. The Democrats, having seen how much damage was done in half a day, continue to stonewall. This is the same party that in 1990 had the House Banking Committee spend two days in public hearings on Neil Bush's involvement in the collapsed Silverado S&L. At the time, Democrats were gleeful about making Bush the "S&L poster boy." Now that the S&L poster girl might turn out to be named Clinton, they express deep concern about the partisanship of such hearings.

This is the same party that bathed the country in Iran-contra hearings. That put every syllable of Anita Hill's charges against Clarence Thomas on national TV. That even saw fit to hold hearings on a total fiction, the so-called October Surprise.

If Bill Clinton were a Republican, we would now be in our third month of hearings of a Select Committee on Whitewater. We would by now have a pretty good idea of the financial, political and—a particular interest of Mrs. Clinton's—moral conduct of the Clintons during the "decade of greed" that they ran so successfully against in 1992.

So much for the hypocrisy. What about the public interest? The Democrats are trying to hide behind the Whitewater prosecutor, who is advising against hearings on the grounds that they might adversely affect his investigation. Aren't they right? Would not congressional hearings interfere with the prosecutor's work?

To which there are two answers. First, they do not have to. In fact, in this case, the prosecutor's own investigation of secret White House-RTC contacts was helped—indeed, triggered—by a disclosure elicited in congressional hearings.

True, the convictions of Oliver North and John Poindexter were famously overturned because of the immunity they had been granted in congressional testimony. To which the remedy is: no immunity.

If in congressional Whitewater hearings those subpoenaed decide to take the Fifth Amendment and not testify, fine. That is their right. The public will then have to wait for the press and the special prosecutor to ferret out the story. Nothing lost.

If, on the other hand, they do testify, much will be gained. The American people will learn about Whitewater today rather than next year. They can begin to make judgments based on the sworn testimony of the people involved.

But second, even if there is some disruption of the prosecutor's case, so what? Every prosecutor wants control. But a prosecutor's interests are not necessarily the same as the public interest.

The prosecutor's interest is prosecution. The public interest is disclosure. The prosecutor tries to find breaches of law. The public needs to know about breaches of trust. The public's interest in Whitewater is not, say, to see Hillary Clinton or her Rose law partners on trial. It is to find out simply what happened.

This capital has just endured a decade during which the criminalization of policy differences and ethical lapses became the norm. Perhaps it is poetic justice that the fate Democrats visited on Republicans should now rebound on them. But that would just compound the injustice.

The public interest is served best not by criminalizing but by publicizing. The most

important objective of these inquiries is not to put people in jail (though that may happen) but to help us reach a judgment. Congressional hearings would do just that.

THE RAPIDS OF WHITEWATER

A congressional investigation of the Whitewater affair now seems not just possible but inevitable. Probably it is some months off. Republicans who are pushing for hearings say they are ready to wait while a federal grand jury in Washington hears testimony involving possible criminal wrongdoing. That is a responsible course, and the congressional Democratic leadership, rather than trying to block an investigation, should seek an early compromise on just what one would involve.

The first of 10 White House employees subpoenaed by the grand jury, including two members of Hillary Rodham Clinton's staff, were heard Thursday.

White House staff members, it was learned last week, had been briefed on the tangled Whitewater affair by federal regulators, raising serious concerns about whether the investigation was compromised. Those concerns have already forced the resignation of Bernard Nussbaum, the President's counsel.

In these circumstances Republicans, quite naturally, scent scandal and with it political opportunity. But to dismiss their clamor for congressional involvement as solely a product of partisanship would be to demean the legislative role. Congress' legitimate oversight responsibilities should not be in dispute. Disturbing questions have been raised ranging from the possible illegal diversion of funds from a federally regulated bank in the 1980s to possible obstruction of justice just in recent months. Answers are needed.

Special Counsel Robert B. Fiske Jr. fears that hearings could jeopardize potential prosecutions arising from his investigation. An agreement by Republicans not to compel testimony with grants of immunity is designed to alleviate that worry.

Conflict need not inevitably arise between Congress and the special counsel. Both should be committed only to getting at the truth in the Whitewater case. Is that too much to ask?

Mr. DOLE. Mr. President, I add that this same expression has been indicated by the New York Times, the Washington Post, and also expressed today in the Portland Press Herald in Maine.

So I think there is no doubt about it, and I can say with some authority, having been chairman of our party—the Republican Party—at the time of Watergate. I remember how the White House did not want to hear any bad news, and how the White House unfortunately did not tell the public, did not tell the press, and did not tell the American people.

I am not comparing the two. But I am just saying when people do not have information, they cannot make a judgment. There is a lot of information the American people do not have. Once they got the information on Watergate, they made a judgment. They made a very severe judgment. They want the information on Whitewater, so-called Whitewater. Nobody knows what it is.

When Watergate started, it was a third-rate burglary. When it ended, it was a mess, and it caused great damage to, I think in many cases, the country, and also to the Republican Party, and brought about a lot of changes in ethics laws and everything that deals with ethics.

It just seems to me that if any lesson was learned from that chapter in history, it should be that there ought to be disclosure, there ought to be hearings. There were hearings at that time, day after day after day, on live television, gavel-to-gavel hearings. In fact, I felt there was too much coverage, so much coverage we could not do our work.

So I just suggest that I think the time—it is not here now, it is going to be very soon. I believe that the leadership can work out the responsible hearings. There are a number of committees that have jurisdiction; four or five committees in the Senate. If everybody starts doing something, that will not be a very efficient way to do business. So I hope we can work something out.

It also seems to me that in the case of Mr. Altman and Mr. Hubbell—Mr. Roger Altman is No. 2 at Treasury, and Mr. Webster Hubbell is No. 3 at Justice—it seems to me that they have compromised themselves, and it seems to me it would be in their interests and in the President's interest if they sort of took administrative leave without pay until this matter has been cleared up, or until their names have been cleared.

I do not think they can continue in their present roles while this cloud is hanging over each of them, and maybe others that I am not aware of who have been involved in some of the secret meetings and in some of the activities, not only in the past several months but in the past several years.

Sooner or later everybody who is involved is going to be held accountable. You have to be accountable. In politics, you have to be accountable, in business, anything anybody does. Sooner or later somebody is going to call you to account.

It may touch the White House, it may touch the Treasury, it may touch the Justice Department, or somewhere else. But sooner or later, in my view, there will be hearings, there should be hearings, and I hope when that time comes, it will be on a bipartisan basis.

I remember on the Iran-Contra hearings—I believe this is correct—I think I am the first one who suggested hearings. I suggested that Congress stay in session and complete the hearings as quickly as we could. There was a bipartisan agreement to have hearings, and it involved a Republican White House and Republican President. It seems to me that we had 20 hearings—Congress had 20 hearings, congressional committees in the House and Senate—during the Bush and Reagan Presidencies. For 12 years, Congress was not a bit reluctant to have a nice little congressional hearing over very minor matters. Of course, the Democrats controlled the Congress. The Republicans controlled the White House. Now the Democrats control the White House and the Congress and, suddenly, Republicans are accused of playing politics for wanting the same treatment that we gave to Republican Presidents for 12 years, at least 20 different times.

The public wants to know. My view is that the public will know, and the sooner we get on with our work, the more we can focus on health care, crime, welfare, and the other issues. I believe—and I may be wrong—we should shift the focus away from the President and Mrs. Clinton and back to the Congress, so the President and Mrs. Clinton can pursue their agenda, which is primarily health care, crime, welfare, the same issues we are dealing with.

Mr. President, I hope we can resolve this matter. There are other things that can be done. We do not want to be obstructionists. We just want to be treated the same way. There should not be a double standard. We cannot hide behind special counsel and say we cannot do it because of that special counsel. We can take care of the special counsel's concerns. That can be worked out. So I think that sooner or later we need to say, OK, if there are not going to be any hearings, if that is a final answer, then I think we deserve to know so we can pursue whatever activity might be necessary. But it is a matter of importance to the public, and it should be important to the public. I am hopeful that it can be addressed on a bipartisan basis.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WHITEWATER

Mr. MITCHELL. Mr. President, I understand that the minority leader has, a short time ago, made another statement on the so-called Whitewater matter. Accordingly, I feel constrained to respond.

First, the minority leader made reference to a letter which he had sent to me requesting a meeting to discuss this matter.

Of course, I will be pleased to meet with the minority leader on this matter, as I have on any matter on which he has requested a meeting. In fact, we meet several times a day, including several meetings today, and I will be pleased to meet and discuss this matter with him at any time and to listen to and to give careful consideration to

any suggestion he wishes to make. That has been my practice and that will continue to be my practice.

In the course of the statement, the minority leader, as have other Republican Senators, again called for public hearings on the Whitewater matter.

I would like, if I might, to address that subject, and I think the best way to do it is to put this matter into some context.

Earlier this year when allegations regarding Whitewater received press attention, the minority leader and several of our Republican colleagues publicly insisted that a special prosecutor be named. They urged and encouraged the appointment of a special prosecutor to investigate this matter. And at the time, they said that if a special prosecutor is named, there would be no second-guessing.

In accordance with their request, a special prosecutor was named. That special prosecutor is himself a lifelong Republican, a person who has experience in criminal investigation and prosecution, a person of unquestioned integrity. Indeed, following his appointment, Republican Senators, including the junior Senator from New York, praised him as a man of unquestioned ability and experience. But, of course, within moments after the special counsel was named, the second-guessing began. Contrary to the assertion that there would not be any second-guessing once the special prosecutor was named, hardly was the ink dry on the appointment of a special prosecutor than the second-guessing began. That second-guessing has taken the form of, first, a request for immediate public hearings in the Congress.

On his own initiative, the special prosecutor, Mr. Fiske, who, as I noted, is himself a lifelong Republican, wrote to the chairman and the ranking member of the Banking Committee on March 7 on the subject of hearings, and this is what he said. I think the letter is worth reading in its entirety because I think the American people have a right to know what it is the special prosecutor has requested and why.

He wrote to the two Senators:

I am writing this letter to express my strong concern about the impact of any hearings that your Committee might hold into the underlying events concerning Madison Guaranty Savings and Loan ("MGS&L"), Whitewater and Capital Management Services ("CMS") on the investigation that this Office is conducting into these matters.

As you know, I was appointed to the position of Independent Counsel pursuant to CFR 603.1 on January 31, 1994. Since that date we have obtained an Order from Chief Judge Stephen M. Reasoner in the East District of Arkansas authorizing the empaneling of a grand jury which will be devoted exclusively to the Whitewater/MGS&L/CMS investigation. In the meantime, we have been using the regular grand jury for this District. We have a team of eight experienced attorneys, six of whom were current or former prosecutors when they joined the staff. We are working in Little Rock with a team of more than twenty FBI agents and financial analysts who are working full time on this matter. We are doing everything possible to conduct and conclude as expeditiously as possible a complete, thorough and impartial investigation.

Inquiry into the underlying events surrounding MGS&L, Whitewater and CMS by a Congressional Committee would pose a severe risk to the integrity of our investigation. Inevitably, any such inquiry would overlap substantially with the grand jury's activities. Among other concerns, the Committee certainly would seek to interview the same witnesses or subjects who are central to the criminal investigation. Such interviews could jeopardize our investigation in several respects, including the dangers of Congressional immunity, the premature disclosures of the contents of documents or of witnesses' testimony to other witnesses on the same subject (creating the risk of tailored testimony) and of premature public disclosure of matters at the core of the criminal investigation. This inherent conflict would be greatly magnified by the fact that the Committee would be covering essentially the same ground as the grand jury.

While we recognize the Committee's oversight responsibilities pursuant to Section 501 of PL 101-73 (FIREAA), we have similar concerns with a Congressional investigation into the recently-disclosed meetings between White House and Treasury Department officials—particularly because we believe these hearings will inevitably lead to the disclosure of the contents of RTC referrals and other information relating to the underlying grand jury investigation.

For these reasons, we request that your Committee not conduct any hearings in the areas covered by the grand jury's ongoing investigation, both in order to avoid compromising that investigation and in order to further the public interest in preserving the fairness, thoroughness, and confidentiality of the grand jury process.

I will be glad to meet with you personally to explain our position further if you feel that would be helpful.

Respectfully yours,

ROBERT B. FISKE, Jr.,
Independent Counsel.

Mr. MITCHELL. Mr. President, I repeat and emphasize, this is a letter, on his own initiative, by an independent counsel appointed at the request of Republicans, who is himself a Republican, and, according to our Republican colleagues in the Senate, a man of total integrity and fairness. This is his request that no investigation, no congressional hearings be held.

Mr. President, reference was made to the fact that he met with the ranking Republican Senator on the committee, who took him up on his request in the last sentence of the letter offering to meet personally. And what did Mr. Fiske say after that meeting? This is a quote from Mr. Fiske after the meeting with the Republican Senator:

My position, as expressed in the letter and right now, is that I would prefer that there be no congressional hearings.

Mr. President, let us be clear at the outset. Congress has an important oversight responsibility. Congress should meet that responsibility, and I am confident that Congress will meet that responsibility, by conducting a careful inquiry, including hearings at an appropriate time and under circumstances which do not undermine the ongoing investigation by the independent counsel. There can and should be no doubt about that.

The only question is not whether there will be congressional oversight, because there certainly will be; the only question is whether we should heed the request of the independent counsel and have hearings at a time and under a circumstance which will undermine that investigation.

I believe we should honor the request of the special counsel. Our Republican colleagues do not want to do that. They want to have hearings now. Why is that? Well, I will get to that in a moment, what the motivation is by our colleagues for a hearing.

Before I do, let me describe the reasons such hearings now would undermine that investigation.

Mr. President, reference was made in the remarks of the minority leader and repeated by our colleagues that investigations have been conducted in the past, and we ought to do things now just the way we did them in the past. The implication was created that there have been no oversight responsibilities conducted by this Congress since the Clinton administration took office. Those oversight responsibilities are, in fact, being conducted.

The sole issue here is where you have an independent legal investigation, you should have congressional hearings at a time and under circumstances which will undermine the independent legal investigation. And on that question, the answer is clear.

The Iran-Contra inquiry is often cited, and was cited here today. The independent counsel in the Iran-Contra case, Judge Lawrence Walsh, himself a lifelong Republican who served in the Justice Department under a Republican President and a Republican administration, said in remarks made by him in January of this year:

I think the views of some of those in the congressional committees that there was a possibility of concurrent activity that the Congress could investigate on television and that the criminal prosecution could also go on was just proved to be wrong, and I think the lesson is very clear, as we spelled out in the report. Congress has control. It's a political decision as to which is more important, but it can't have both. If it wants to proceed with a joint committee or a special committee or have to compel testimony by granting immunity, it has to realize that the odds are very strong that it's going to kill any resulting criminal prosecution.

In the report itself, on Iran-Contra, Judge Walsh stated:

Congress should be aware of the fact that future immunity grants, at least in such highly publicized cases, will likely rule out criminal prosecution.

Congressional action that precludes, or makes it impossible to sustain, a prosecution has more serious consequences than simply

one less conviction. There is a significant inequity when more peripheral players are convicted while central figures in a criminal enterprise escape punishment. And perhaps more fundamentally, the failure to punish governmental lawbreakers feeds the perception that public officials are not wholly accountable for their actions.

Just yesterday, in a television interview, Judge Walsh made the following comments:

> Why can't they wait until Mr. Fiske finishes? What is it that there is so urgent about the Whitewater matter that it requires instant publicity and can't wait until an orderly prosecution is developed?

Well, of course, he hit the nail on the head in his comment—"instant publicity." That is what our colleagues are interested in, and the American people know that.

Mr. President, my colleague made reference to public opinion polls to support his conclusion. Well, just 2 days ago, a public opinion poll reported that 12 percent of Americans believe that Republicans are raising the Whitewater issue because they care about the matter; 78 percent believe that they are doing it for political gain.

Rarely are Americans so overwhelmingly in consensus on a matter, and rarely have they been more right. This is pure partisan politics. Everybody knows that. The American people know it. Even our colleagues know it. This is an effort to embarrass the President, to injure the President by any means possible, and to divert attention away from the central issues concerning us.

The most important issue facing America today, as it has been for years, is the need for economic growth and job creation, the need to get our economy moving, the need to create jobs for those Americans who want them and need them. Is there a single member of the American public today who knows what the Republican program is for economic growth and job creation? Is there anyone in the country who knows it? The answer is no, because there is none. They do not have time for economic growth and job creation because all they want to talk about is Whitewater. This is a way of diverting attention from the failure of Republicans to present to the American people concrete programs for economic growth and job creation, the central need in our country today as it has been for years and as it will be increasingly as we move into the next century.

And it is ironic and no coincidence that this further discussion about Whitewater occurs on a day in which Republicans are filibustering a bill, here in the Senate, which is intended to encourage technological innovation, job creation, and economic growth. Think about that. What an incredible and sad juxtaposition of events, that Republican Senators are engaged in a filibuster on a bill whose purpose is to create jobs, encourage technological innovation, and have economic growth, and as they seek to prevent that what they want us to do is to go have hearings on Whitewater, which of course will have the effect of undermining the independent counsel's investigation.

I do not think those are the priorities of the American people and I do not think they ought to be the priorities of the U.S. Senate.

Mr. President, I want to respond specifically to the suggestion that there is a double standard; that we had a practice in the past and we ought to have the same practice now. The comparison between this case and Iran-Contra is invalid because the law of the land today is different than it was then, and it was changed specifically arising out of the Iran-Contra case. In that case, Marine Lt. Col. Oliver North was granted immunity to testify before a congressional committee. He testified. Following that testimony he was indicted by a Federal grand jury, tried in Federal court, and convicted on three counts. He then appealed those convictions on the grounds that the prosecution improperly utilized his immunized testimony before the Congress, and the court of appeals agreed and reversed his convictions. And in deciding the case the court of appeals set forth a standard for such matters that is substantially different than the law was prior to then.

Prior to that case, which is now the governing law because the court of appeals opinion was not reviewed by the Supreme Court—prior to that case, the state of the law was set forth in a decision rendered by the Supreme Court in 1972 in a case, Kastigar versus the United States, in which the court said that a prosecution following immunized testimony requires the prosecutor to establish that the evidence presented was not derived from the immunized testimony.

It was a reasonable standard which could be met in certain circumstances. The court of appeals decision elevated that standard to a far higher level by requiring that it be done, if necessary, item by item, line by line, witness by witness—a standard which I say, as a former Federal prosecutor and a former Federal judge, simply cannot be met.

The current state of the law as set forth by the court of appeals in the North case in 1990, which arose out of the Iran-Contra investigation, effectively precludes both a congressional inquiry and a serious criminal investigation. Judge Walsh said it explicitly: "It cannot have both." And in that respect, Judge Walsh's analysis of the current state of the law is correct. And he should know, since he was the independent counsel who prosecuted the North case.

Now, Mr. President, the response will be: Well, we have already said we will not insist on giving immunity to any witnesses.

But, Mr. President, if we announce an inquiry and in advance say that no matter what the witnesses say or do we are not going to grant immunity, then we are guaranteeing that there is not going to be full disclosure of the facts. And what we are saying is we want to have this hearing for political purposes, because no matter what happens it will give us another forum to embarrass the President. That is really what the objective is here and it is so clear.

And furthermore, the reason not to have the congressional hearing goes beyond the question of immunized testimony, as Mr. Fiske himself made crystal clear in his letter. And I quote again from that letter:

> Such interviews could jeopardize our investigation in several respects, including the dangers of Congressional immunity, [one concern] the premature disclosures of the contents of documents or of witnesses' testimony to other witnesses on the same subject (creating the risk of tailored testimony) [a second independent reason] and of premature public disclosure of matters at the core of the criminal investigation [a third independent basis].

So, one reason not to do this in a way that undermines the special prosecutor's investigation is, first, if you announce in advance that no one is going to get immunity no matter what they do you reduce the likelihood of getting the very disclosure which is supposed to be the purpose of the hearing. And, second, even if you do not grant immunity you pose severe risks to the ongoing legal investigation for the other reasons, independent of immunity, stated by the special counsel.

I want to repeat, there is no doubt that there are going to be hearings; that there is going to be congressional oversight. That is the one thing on which we all agree. And the only question is the timing and circumstances in which such hearings should be held and such investigations should be held.

It is very clear that based on the current state of the law, based upon the request of the special counsel himself, those hearings and that congressional oversight should occur at a time and under circumstances when there is no jeopardy to the ongoing investigation.

The best way to find out the truth of what happened and the only way to ensure appropriate punishment for any wrongdoing is to let the special counsel do his job, and as he does it, let the chips fall where they may.

I know Robert Fiske. He is a Republican. He is a man of integrity. He is a man of experience. I believe he will conduct a thorough, fair, and impartial investigation. If he finds wrongdoing, I am convinced he will seek those engaged in wrongdoing, and if he does not find it, I am confident he will say that and give the reasons why. But we ought not to be here trying to exploit this matter for partisan political purposes, trying to divert attention away from the other pressing issues which confront us.

The answer is, of course, Congress will meet its oversight responsibilities. Congress will do so at a time and under circumstances that are appropriate and will not undermine the special counsel's investigation.

We learn from experience, not just in public policy but in all of our daily lives. We learn from dealing with our children, with our families. We learn in business. We ought to also learn here we have had an experience which taught a valuable lesson. There are those now who want to ignore that lesson who, for purely partisan political purposes, want to take a course of action which the special counsel has requested we not take, and for good and sound reasons has asked that we defer.

Mr. President, I say to Members of the Senate, we have a lot to do. We hope to pass comprehensive health care reform this year; we hope to pass strong and meaningful welfare reform; we hope to pass a tough crime bill; we hope to pass campaign finance reform; we have substantial, major environmental laws with which to deal, including the Clean Water Act and the Safe Drinking Water Act. We are trying right now to pass a bill on technology and innovation that will spur economic growth and create jobs. That is what we should be doing. That is what we should be devoting our attention to: The real needs of the American people; the real need for economic growth, for job creation, for opportunity in our society, for the chance for people to have good health care that they can afford; to have safety and security in their homes and in their neighborhoods and on the streets of their cities. Those are the tasks that confront us; those are the tasks to which we should address ourselves.

I hope very much that over the coming weeks and months we can devote ourselves to that and we can support the special counsel's investigation in the way that is best suited to bring about full public disclosure of the truth of what occurred and appropriate punishment of any wrongdoing that occurred.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—FILING OF AMENDMENTS TO S. 4

Mr. MITCHELL. Mr. President, I ask unanimous consent that on Monday, March 14, notwithstanding the recess of the Senate, with respect to the cloture motions filed regarding S. 4, that Senators with listed amendments may file first-degree amendments until 1 p.m. in their respective cloakrooms; further, that with respect to second-degree amendments, Senators may file until 9:15 a.m. on Tuesday, March 15.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:59 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 965) to provide for toy safety and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2303. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2304. A communication from the Office of the Commissioner (U.S. Section), International Boundary and Water Commission, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2305. A communication from the General Counsel of the Federal Emergency Management Agency, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2306. A communication from the Office of the Marshal of the Supreme Court, transmitting, pursuant to law, the report on the costs of protective functions for the period February 15, 1993 through February 15, 1994; to the Committee on the Judiciary.

EC-2307. A communication from the Executive Director of Government Affairs, Non-Commissioned Officers Association of the United States of America, transmitting, pursuant to law, the report of the consolidated financial statements for December 31, 1992 and 1993; to the Committee on the Judiciary.

EC-2308. A communication from the Assistant Attorney General (Legislative Affairs), transmitting, pursuant to law, a report on proposed legislation entitled "Bankruptcy Amendments Act of 1993"; to the Committee on the Judiciary.

EC-2309. A communication from the General Counsel of the Federal Mediation and Conciliation Service, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2310. A communication from the Board Members of the Railroad Retirement Board, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2311. A communication from the Director of the United States Information Agency, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2312. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2313. A communication from the President of the Inter-American Foundation, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2314. A communication from the Acting Chairman of the Commodity Futures Trading Commission, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2315. A communication from the Acting Chairman of the Federal Deposit Insurance Corporation, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2316. A communication from the Chairman of the Consumer Product Safety Commission, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2317. A communication from the Chairman of the National Endowment for the Humanities, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2318. A communication from the Assistant Secretary of the Interior (Policy, Management and Budget), transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2319. A communication from the Vice President and General Counsel of the Overseas Investment Corporation, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2320. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC–2321. A communication from the General Counsel of the Legal Services Corporation, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC–2322. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report relative to domestic industries; to the Committee on the Judiciary.

EC–2323. A communication from the Director of the Federal Bureau of Prisons, Department of Justice, a report on functional literacy requirements for all individuals in Federal correctional institutions; to the Committee on the Judiciary.

EC–2324. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation to amend the Immigration and Nationality Act to authorize appropriations for refugee and entrant assistance for fiscal years 1995 and 1996; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. JEFFORDS:

S. 1925. A bill to provide for the conservation of rhinoceros and tigers, and for other purposes; to the Committee on Environment and Public Works.

By Mr. PRESSLER (for himself and Mr. LEAHY):

S. 1926. A bill to amend the Food and Stamp Act of 1977 to modify the requirements relating to monthly reporting and staggered issuance of coupons for households residing on Indian reservations, to ensure adequate access to retail food stores by food stamp households, and to maintain the integrity of the Food Stamp Program, and for other purposes; considered and passed.

By Mr. ROCKEFELLER (for himself, Mr. MURKOWSKI, Mr. DECONCINI, Mr. MITCHELL, Mr. GRAHAM, Mr. AKAKA, Mr. DASCHLE, Mr. CAMPBELL, Mr. THURMOND, Mr. SIMPSON, Mr. SPECTER, and Mr. JEFFORDS):

S. 1927. A bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to the Committee on Veterans' Affairs.

By Mr. ROBB:

S.J. Res. 168. A joint resolution designating May 11, 1994, as "Vietnam Human Rights Day"; to the Committee on the Judiciary.

By Mr. WARNER (for himself, Mr. THURMOND, Mr. KENNEDY, Mr. CHAFEE, Mr. SIMON, Mr. CAMPBELL, and Mr. GLENN):

S.J. Res. 169. A joint resolution to designate July 27 of each year as "National Korean War Veterans Armistice Day"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MOYNIHAN (for himself and Mr. WARNER):

S. Res. 188. A resolution to recognize the outstanding service of the Architect of the Capitol, the Honorable George M. White, for the restoration of the Statue of Freedom; considered and agreed to.

By Mr. MITCHELL (for himself and Mr. COHEN):

S. Res. 189. A resolution congratulating Bowdoin College on the occasion of its bicentennial anniversary; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JEFFORDS:

S. 1925. A bill to provide for the conservation of rhinoceros and tigers, and for other purposes; to the Committee on Environment and Public Works.

RHINOCEROS AND TIGER CONSERVATION ACT OF 1994

Mr. JEFFORDS. Mr. President, in 1970 there were over 65,000 black rhinoceros alive in the wild. Today there are only 2,000, and this number is rapidly declining. Of the eight species of tiger which have historically roamed our planet, three species are extinct. In fact, there are fewer than 5,000 tigers left in the wild, a 95 percent decline within this century. At this rate of decline, these species may not survive into the next century.

Mr. President, we can no longer stand by and allow these animals to go extinct. The threat is real and it is immediate. Loss of habitat and exploitation by humans threaten the survival of rhinoceros and tigers. But the gravest threat to these species is the international trade in rhinoceros and tiger parts and products. Poaching of rhinoceros and tigers continues because a few select countries continue to use parts from these animals for traditional medicinal purposes and other uses. This illegal trade must stop.

The Convention on International Trade in Endangered Species [CITES] accords protection for wild animals that are in danger of extinction. This Convention, signed in Washington in 1973, asks members to take limited trade sanctions against countries who engage in trade or taking which reduces the effectiveness of any international endangered species conservation program. U.S. law implementing the treaty allows the Secretary of Interior to make determinations if a country is engaging in illegal wildlife trade. If the Secretary certifies that a country is threatening the survival of an endangered species, the President has 60 days to decide whether to take further action. This can include working with violators to develop laws and enforcement mechanisms to end the use and trade in endangered species, as well as establishing education plans and programs to consolidate and control stockpiles. Finally, the President can approve import prohibitions if a country continues to violate the international laws.

Since 1974, the Department of Interior has certified foreign countries more than 20 times, most for diminishing the effectiveness of whaling protection laws. However, sanctions have never been imposed by the President. In the case of rhinoceros and tigers, I believe we must seriously consider sanctions against those countries who are continuing to violate international endangered species law.

Mr. President, today I am introducing legislation which will go a long way toward protecting the last remaining rhinoceros and tigers in the wild. The Rhinoceros and Tiger Conservation Act of 1994 will create a mechanism to support the conservation programs of nations whose activities affect rhinoceros and tiger populations and provide and financial resources for those programs.

The conservation fund can be used to support projects which protect rhinoceros and tiger habitat and programs which attempt to end the demand for rhinoceros and tiger parts and products. The fund is modeled after the highly successful African Elephant Conservation Fund created in 1988 by the U.S. Congress. This fund has provided grants to 33 elephant protection projects in 13 countries, including: Burkina Faso, Botswana, Cameroon, Central African Republic, Congo, Gabon, Kenya, Malawi, Namibia, Senegal, Tanzania, Zambia and Zimbabwe. These countries do not have the money or the manpower to stop poaching. Many of the projects assisted by the fund have proven vital to the continued survival of African elephants.

In addition, Mr. President, the fund can be used to help those countries which use and trade rhinoceros and tiger parts to end these illegal practices. This money could help violators set up public education programs, establish training programs for enforcement personnel and develop plans to consolidate and control stockpiles. Ending demand will reduce illegal poaching and preserve species.

Also, Mr. President, the legislation mandates an end to the importation into the United States of all fish and wildlife products from nations that continue to violate international laws and trade in rhinoceros and tiger products or engage in other activities that adversely affect those animals survival.

Mr. President, we must act immediately to avoid the extinction of the last remaining rhinoceros and tiger populations. Unless we take action, the dramatic decline in these animals will continue, until it is too late. This legislation is a bold step toward achieving this goal. I urge my colleagues to join in working to project and preserve those rhinoceros and tigers living in the wild.

By Mr. ROCKEFELLER (for himself, Mr. MURKOWSKI, Mr. DECONCINI, Mr. MITCHELL, Mr.

GRAHAM, Mr. AKAKA, Mr. DASCHLE, Mr. CAMPBELL, Mr. THURMOND, Mr. SIMPSON, Mr. SPECTER, and Mr. JEFFORDS):

S. 1927. A bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to the Committee on Veterans' Affairs.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 1994

• Mr. ROCKEFELLER. Mr. President, as the chairman of the Committee on Veterans' Affairs, I am introducing today S. 1927, the proposed Veterans Compensation Cost-of-Living Adjustment Act of 1994. I am enormously pleased that the entire membership of the Committee on Veterans' Affairs has joined me as original cosponsors of this important measure—including ranking minority member FRANK MURKOWSKI and Senators DENNIS DECONCINI, GEORGE MITCHELL, BOB GRAHAM, DANIEL AKAKA, TOM DASCHLE, BEN NIGHTHORSE CAMPBELL, STROM THURMOND, ALAN SIMPSON, ARLEN SPECTER, and JAMES JEFFORDS.

Mr. President, this bill would increase, effective December 1, 1994, the rates of compensation paid to veterans with service-connected disabilities and the rates of dependency and indemnity compensation, or DIC, paid to the survivors of certain service-disabled veterans. The rates would increase by the same percentage as the increase in Social Security and VA pension benefits. The compensation COLA would become effective on the same date that the increase for those benefits takes effect.

Mr. President, we have a fundamental obligation to address the needs of the 2.2 million service-disabled veterans and 332,250 survivors who depend on these compensation programs. The needs of these veterans and survivors are uniquely related to veterans' enormous sacrifices on behalf of our great Nation. Addressing these needs is a top priority of mine as chairman of the Committee on Veterans' Affairs.

I represent a State where military service is held in the highest esteem. Ever since I entered public life, to serve the people of West Virginia, I have worked very closely with our veterans and their families. The compensation payments that this bill would adjust have a profound effect on the everyday lives of over 2½ million veterans and veterans' survivors—including over 20,500 in West Virginia. It is our responsibility to continue to provide increases in compensation and DIC benefits in order to ensure that the value of those top-priority, service-connected VA benefits is not eroded by inflation. Most recently, on November 4, 1993, Congress enacted Public Law 103–140, providing a 2.6-percent increase in these same benefits, effective December 1, 1993.

The Congressional Budget Office estimates that the December 1, 1994, Social Security and VA pension COLA will be 3 percent. This is a preliminary estimate, but I expect the actual increase will be close to this estimate. The Congressional Budget Office estimates that a 3-percent COLA would cost approximately $340 million over current law.

Mr. President, I am proud that Congress has provided annual increases in VA compensation rates every fiscal year since 1976, and I urge all of my colleagues to continue to support these necessary increases.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1927

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Compensation Cost-of-Living Adjustment Act of 1994".

SEC. 2. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES.

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1994, the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

(2)(A) The Secretary shall increase each of the rates and limitations provided for in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code. The increase shall be by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1994, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 (2 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 214(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1994, the Secretary shall publish in the Federal Register the rates and limitations referred to in subsection (a)(2)(A) as increased under this section.•

By Mr. ROBB:

S.J. Res. 168. A joint resolution designating May 11, 1994, as "Vietnam Human Rights Day"; to the Committee on the Judiciary.

VIETNAM HUMAN RIGHTS DAY

• Mr. ROBB. Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 168

Whereas May 11, 1994, is the fourth anniversary of the issuance of the manifesto of the Non-Violent Movement for Human Rights in Vietnam;

Whereas the Manifesto, which calls upon Hanoi to respect basic human rights, accept a multiparty system, and restore the right of the Vietnamese people to choose their own form of government through free and fair elections, reflects the will and aspirations of the people of Vietnam;

Whereas the author of the Manifesto, Dr. Nguyen Dan Que, and thousands of innocent Vietnamese, including religious leaders, are imprisoned by the Socialist Republic of Vietnam because of their nonviolent struggle for freedom and human rights;

Whereas the leaders of the Socialist Republic of Vietnam are seeking to expand diplomatic and trade relations with the rest of the world;

Whereas the United States, as the leader of the free world, has a special responsibility to safeguard freedom and promote the protection of human rights throughout the world; and

Whereas the Congress urges Hanoi to release immediately and unconditionally all political prisoners, including Dr. Nguyen Dan Que, with full restoration of their civil and human rights; guarantee equal protection under the law to all Vietnamese, regardless of religious belief, political philosophy, or previous associations; restore all basic human rights, such as freedom of speech, religion, movement, and association; abolish the single party system and permit the functioning of all political organizations without intimidation or harassment and announce a framework and timetable for free and fair election under the sponsorship of the United Nations that will allow the Vietnamese people to choose their own form of government: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That May 11, 1994, is designated as "Vietnam Human Rights Day" in support of efforts by the Non-Violent Movement for Human Rights in Vietnam to achieve freedom and human rights for the people of Vietnam, and the President is authorized and requested to issue a proclamation calling upon the people of the United States to commemorate such day with appropriate ceremonies and activities.•

By Mr. WARNER (for himself, Mr. THURMOND, Mr. KENNEDY, Mr. CHAFEE, Mr. SIMON, Mr. CAMPBELL, and Mr. GLENN):

S.J. Res. 169. A joint resolution to designate July 27 of each year as "National Korean War Veterans Armistice Day"; to the Committee on the Judiciary.

NATIONAL KOREAN WAR VETERANS ARMISTICE DAY

Mr. WARNER. Mr. President, I rise today to introduce legislation, along with all of my seven fellow Korean war era veterans who are currently serving in the Senate, which would designate July 27 of each year as the "National Korean War Veterans Armistice Day."

This day, July 27, is the anniversary date of the signing of the armistice which led to the end of active hostilities in the Korean war.

Considered to be the forgotten war, I believe all Americans should be given the opportunity to reflect upon this tragic conflict and to realize the impact this war had on the many men and women who served this Nation in the armed services, as well as those who did not wear the uniform. With more than 160,000 casualties, the Korean war and our victory came at great cost, and its outcome shapes the very world political climate we live in today.

This year is the forty-first anniversary year of the signing of the armistice which ended the Korean war, and we are seeking passage of this resolution prior to June 25, 1994, the forty-fourth anniversary of the beginning of the Korean war. This schedule will afford the legislation and executive leadership of the Nation the opportunity to become role models for appropriate resolutions or proclamations promulgated by the State, county, and municipal governments. In addition, the prompt passage of this resolution will allow time for the preparation of other appropriate ceremonies and activities called for in the proclamation to be issued by the President.

I am confident you will agree that we must, as a nation, recognize the sacrifices made by so many men and women during the Korean war.

Therefore, I respectfully ask each of my colleagues to cosponsor this truly worthwhile legislation.

ADDITIONAL COSPONSORS

S. 1678

At the request of Mr. FAIRCLOTH, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1678, a bill to amend the Immigration and Nationality Act to provide that public ceremonies for the admission of new citizens shall be conducted solely in English.

S. 1693

At the request of Mr. REID, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 1693, a bill to amend the Internal Revenue Code of 1986 to delay the effective date for the change in the point of imposition of the tax on diesel fuel, to provide that vendors of diesel fuel used for any nontaxable use may claim refunds on behalf of the ultimate users, and to provide a similar rule for vendors of gasoline used by State and local governments.

S. 1728

At the request of Mr. BRYAN, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 1728, a bill to provide regulatory capital guidelines for treatment of real estate assets sold with limited recourse by depository institutions.

S. 1802

At the request of Mr. HOLLINGS, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1802, a bill for the relief of Johnson Chestnut Whittaker.

S. 1837

At the request of Mr. RIEGLE, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1837, a bill to suspend temporarily the duty on the personal effects of participants in, and certain other individuals associated with, the 1994 World Cup soccer games.

S. 1913

At the request of Mr. COCHRAN, the names of the Senator from Idaho [Mr. CRAIG] and the Senator from Idaho [Mr. KEMPTHORNE] were added as cosponsors of S. 1913, a bill to extend certain compliance dates for pesticide safety training and labeling requirements.

SENATE JOINT RESOLUTION 160

At the request of Mr. RIEGLE, the names of the Senator from Minnesota [Mr. WELLSTONE], the Senator from Kentucky [Mr. FORD], the Senator from Arkansas [Mr. BUMPERS], and the Senator from California [Mrs. BOXER] were added as cosponsors of Senate Joint Resolution 160, a joint resolution to designate the month of April 1994, as "National Sudden Infant Death Syndrome Awareness Month," and for other purposes.

SENATE JOINT RESOLUTION 161

At the request of Mr. BUMPERS, the names of the Senator from Mississippi [Mr. LOTT], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Georgia [Mr. COVERDELL], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of Senate Joint Resolution 161, a joint resolution to designate April 1994, as "Civil War History Month."

SENATE JOINT RESOLUTION 164

At the request of Mr. BROWN, the names of the Senator from Virginia [Mr. WARNER] and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 164, a joint resolution to designate June 4, 1994, as "National Trails Day."

SENATE RESOLUTION 188—RELATIVE TO THE ARCHITECT OF THE CAPITOL

Mr. MOYNIHAN (for himself and Mr. WARNER) submitted the following resolution; which was considered and agreed to:

S. RES. 188

Whereas the Statue of Freedom Triumphant in Peace and War has stood atop the tholos of the United States Capitol Dome since December 2, 1863;

Whereas the Statue of Freedom has served since its installation as an object of great national pride and inspiration;

Whereas the Statue, modeled by the American sculptor Thomas Crawford in Rome, and cast by Clark Mills in Northeast Washington, D.C., using bronze made of zinc, Lake Superior copper, and tin purchased in New York, was found after inspection in 1988 to be suffering from rust and corrosion and to be in need of repair;

Whereas the plan developed by the Architect of the Capitol for carrying out the necessary repairs required great skill and expertise in historical restoration techniques as well as extraordinary feats of engineering for the removal and replacement of the Statue; and

Whereas Members of Congress, residents of Washington, D.C., and visitors watched with awe and appreciation as the Architect's plan unfolded, accomplishing the removal, restoration, and replacement of the Statue atop the Dome in time for the 200th anniversary of the laying of the cornerstone of the Capitol: Now, therefore, be it

Resolved, That the Architect of the Capitol, the Honorable George M. White, is recognized and commended for outstanding service to the Capitol and to the Nation for successfully restoring the original grandeur of the Statue of Freedom.

SEC. 2. The Secretary shall transmit a copy of this resolution to the Architect of the Capitol, the Honorable George M. White.

SENATE RESOLUTION 189—RELATIVE TO BOWDOIN COLLEGE

Mr. MITCHELL (for himself and Mr. COHEN) submitted the following resolution; which was considered and agreed to:

S. RES. 189

Whereas Bowdoin College was established in 1794 by the General Court of the Commonwealth of Massachusetts as the first college in the District of Maine;

Whereas, since 1802, Bowdoin College has educated students from Maine, the rest of the Nation, and many foreign countries on the principle that: "literary institutions are founded and endowed for the common good and not for the private advantage of those who resort to them for education";

Whereas alumni of Bowdoin College have included 1 President of the United States, 16 Members of the Senate, 42 Members of the House of Representatives, 2 Supreme Court Justices, and many other public officials;

Whereas other distinguished alumni of Bowdoin College have included authors Nathaniel Hawthorne and Henry Wadsworth Longfellow, Civil War hero and the Governor of Maine Joshua Chamberlain, Arctic explorer Admiral Robert E. Peary, and Olympic gold medalist Joan Benoit Samuelson; and

Whereas Bowdoin College is consistently named one of the Nation's most outstanding liberal arts colleges: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the contributions made by Bowdoin College to the State of Maine and the Nation over the past 200 years;

(2) extends heartiest congratulations to the students, alumni, faculty, staff, and administrators of this great institution of higher learning on the occasion of its bicentennial anniversary; and

(3) offers best wishes for the continued success of Bowdoin College in the future.

AMENDMENTS SUBMITTED

FEDERAL WORKFORCE RESTRUCTURING ACT

GRAMM AMENDMENT NO. 1495

Mr. GRAMM proposed an amendment to the bill (H.R. 3345) to amend title 5, United States Code, to eliminate certain restrictions on employee training; to provide temporary authority to agencies relating to voluntary separation incentive payments, and for other purposes; as follows:

At the end of Section 5, insert the following:

SEC. . CREATION OF VIOLENT CRIME REDUCTION TRUST FUND.

VIOLENT CRIME REDUCTION TRUST FUND

"(a) There is established a separate account in the Treasury, known as the 'Violent Crime Reduction Trust Fund', into which shall be deposited deficit reduction (as defined in subsection (b) of this section) achieved by the preceding section.

"(b) On the first day of the following fiscal years (or as soon thereafter as possible for fiscal year 1994), the following amounts shall be transferred from the general fund to the Violent Crime Reduction Trust Fund—

"(1) for fiscal year 1994, $720,000,000;

"(2) for fiscal year 1995, $2,423,000,000;

"(3) for fiscal year 1996, $4,267,000,000;

"(4) for fiscal year 1997, $6,313,000,000; and

"(5) for fiscal year 1998, $8,545,000,000.

"(c) Notwithstanding any other provision of law—

"(1) the amounts in the Violent Crime Reduction Trust Fund may be appropriated exclusively for the purposes authorized in the Violent Crime Control and Law Enforcement Act of 1993;

"(2) the amounts in the Violent Crime Reduction Trust Fund and appropriations under paragraph (1) of this section shall be excluded from, and shall not be taken into account for purposes of, any budget enforcement procedures under the Congressional Budget Act of 1974 or the Balanced Budget and Emergency Deficit Control Act of 1985; and

"(3) for purposes of this subsection, 'appropriations under paragraph (1)' means amounts of budget authority not to exceed the balances of the Violent Crime Reduction Trust Fund and amounts of outlays that flow from budget authority actually appropriated.".

(b) LISTING OF THE VIOLENT CRIME REDUCTION TRUST FUND AMONG GOVERNMENT TRUST FUNDS.—Section 1321(a) of title 31, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(91) Violent Crime Reduction Trust Fund.".

(c) REQUIREMENT FOR THE PRESIDENT TO REPORT ANNUALLY ON THE STATUS OF THE ACCOUNT.—Section 1105(a) of title 31, United States Code, is amended by adding at the end thereof:

"(29) information about the Violent Crime Reduction Trust Fund, including a separate statement of amounts in that Trust Fund.

"(30) an analysis displaying by agency proposed reductions in full-time equivalent positions compared to the current year's level in order to comply with section 1352 of the Violent Crime Control and Law Enforcement Act of 1993.".

SEC. . CONFORMING REDUCTION IN DISCRETIONARY SPENDING LIMITS.

The Director of the Office of Management and Budget shall, upon enactment of this Act, reduce the discretionary spending limits set forth in section 601(a)(2) of the Congressional Budget Act of 1974 for fiscal years 1994 through 1998 as follows:

(1) for fiscal year 1994, for the discretionary category: $720,000,000 in new budget authority and $314,000,000 in outlays;

(2) for fiscal year 1995, for the discretionary category: $2,423,000,000 in new budget authority and $2,330,000,000 in outlays;

(3) for fiscal year 1996, for the discretionary category: $4,267,000,000 in new budget authority and $4,184,000,000 in outlays;

(4) for fiscal year 1997, for the discretionary category: $6,313,000,000 in new budget authority and $6,221,000,000 in outlays; and

(5) for fiscal year 1998, for the discretionary category: $8,545,000,000 in new budget authority and $8,443,000,000 in outlays.

NATIONAL COMPETITIVENESS ACT

BROWN AMENDMENT NO. 1496

Mr. BROWN proposed an amendment to the bill (S. 4) to promote the industrial competitiveness and economic growth of the United States by strengthening and expanding the civilian technology programs of the Department of Commerce, amending the Stevenson-Wydler Technology Innovation Act of 1980 to enhance the development and nationwide deployment of manufacturing technologies, and authorizing appropriations for the Technology Administration of the Department of Commerce, including the National Institute of Standards and Technology, and for other purposes; as follows:

At the end of the bill add the following new title:

TITLE —FEDERAL RULES OF CIVIL PROCEDURE

SEC. .RULE 11 FEDERAL RULES OF CIVIL PROCEDURE.

(a) IN GENERAL.—Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subsection (b)(3) by striking out "or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery" and inserting "or are well grounded in fact"; and

(2) in subsection (c)—

(A) in the first sentence by striking out "may, subject to the conditions stated below," and inserting in lieu thereof "shall";

(B) in paragraph (2) by striking out the first and second sentences and inserting in lieu thereof "A sanction imposed for violation of this rule may consist of reasonable attorneys' fees and other expenses incurred as a result of the violation, directives of a nonmonetary nature, or an order to pay penalty into court or to a party."; and

(C) in paragraph (2)(A) by inserting before the period ", although such sanctions may be awarded against a party's attorneys".

(b) EFFECTIVE DATE.—The provisions of this section shall take effect 30 days after the date of the enactment of this Act.

KEMPTHORNE (AND KASSEBAUM) AMENDMENT NO. 1497

Mr. KEMPTHORNE (for himself and Mrs. KASSEBAUM) proposed an amendment to the bill S. 4, supra; as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Heroic Efforts to Rescue Others Act" (HERO Act).

SEC. 2 FINDINGS.

Congress finds that—

(1) existing Occupational Safety and Health Administration regulations require the issuance of a citation to an employer in a circumstance in which an employee of such employer has voluntarily acted in a heroic manner to rescue individuals from imminent harm during work hours;

(2) application of such regulations to employers in such circumstance causes hardships to those employers who are responsible for employees who perform heroic acts to save individuals from imminent harm;

(3) strict application of such regulations in such circumstance penalizes employers as a result of the time lost and legal fees incurred to defend against such citations; and

(4) in order to save employers the cost of unnecessary enforcement an exemption from the issuance of a citation to an employer under certain situations related to such circumstance is appropriate.

SEC. 3. CITATIONS.

Section 9 of the Occupational Safety and Health Act (29 U.S.C. 658) is amended by adding at the end the following new subsection:

"(d)(1) No citation may be issued under this section for a rescue activity by an employer's employee of an individual in imminent harm unless—

"(A)(i) such employee is designated or assigned by the employee's employer with responsibility to perform or assist in rescue operations; and

"(ii) the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment;

"(B)(i) such employee is directed by the employee's employer to perform rescue activities in the course of carrying out the employee's job duties; and

"(ii) the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

"(C)(i) such employee—

"(I) is employed in a workplace that requires such employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water;

"(II) has not been designated or assigned to perform or assist in rescue operations; and

"(III) voluntarily elects to rescue such an individual; and

(ii) the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations—

(I) of the arrangements for rescue;

(II) not to attempt rescue; and

(III) of the hazards of attempting rescue without adequate training or equipment.

"(2) For purposes of this subsection, the term 'imminent harm' means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.".

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS AND NATIONAL PARKS

Mr. BUMPERS. Mr. President, I would like to announce that a hearing

has been scheduled before the Subcommittee on Public Lands, National Parks and Forests.

The hearing will take place on Wednesday, March 23, 1994, beginning at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills pending before the subcommittee:

S. 1270, to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado;

S. 1324, to authorize the Secretary of the Interior to exchange certain lands of the Columbia Basin Federal reclamation project, Washington, and for other purposes;

S. 1402, to convey a certain parcel of public land to the county of Twin Falls, ID, for use as a landfill, and for other purposes;

S. 1703, to expand the boundaries of the Piscataway National Park, and for other purposes; and

H.R. 194, to withdraw and reserve certain public lands and minerals within the State of Colorado for military uses, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit a written statement is welcome to do so by sending two copies to the Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact Dionne Thompson of the subcommittee staff at (202) 224-5925.

SUBCOMMITTEE ON AGRICULTURAL RESEARCH, CONSERVATION, FORESTRY, AND GENERAL LEGISLATION

Mr. BUMPERS. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation will hold a hearing on ecosystem management. The hearing will be held on Thursday, April 14, 1994 at 3 p.m. in SR-332. Senator TOM DASCHLE will preside.

For further information, please contact Maureen McBrien at 224-2321.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee for authority to meet on Friday, March 11, at 10 a.m., in SD-342 Dirksen, for a hearing on the subject: Harmful non-indigenous species in the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

COMMENTING ON THE SECRETARY OF STATE'S VISIT TO CHINA

• Mr. D'AMATO. Mr. President, I rise today to discuss the Secretary of State's upcoming visit to China.

I am shocked that the Secretary will visit Beijing for the purpose of presenting the administration's case for China to improve its human rights practices, and not visit with Chinese dissidents. What could he be thinking?

What better message could the United States send than for the Secretary to meet with Chinese dissidents? If, as the press reports state, the administration is fearful of endangering other dissidents, this kowtowing to the Chinese will only encourage them to hold firm.

When the United States was trying to persuade the Soviet Union to improve its human rights practices, we made every attempt to communicate and meet with Soviet dissidents to show the Soviets that we were not forgetting about these unfortunate victims of the Soviet system. Why should our human rights agenda be any different with the Chinese?

Mr. President, it is bad enough for the administration to go back on its campaign pledge and grant MFN to China, as it did last year, but for it to pull this latest move is adding insult to injury. This is shameful and a sellout of these innocent victims of the harsh, tyrannical system that operates in China. The administration and the State Department should be ashamed of itself. Mr. Secretary, meet with Chinese dissidents and show our support for their plight.•

POLAND'S GREAT EXPERIMENT

• Mr. LIEBERMAN. Mr. President, I would like to take a moment to salute the great Polish experiment that is currently taking place. Unlike other former Communist countries, Poland has taken the path of economic shock therapy. Poland's leaders, including President Lech Walesa, adopted sweeping market reforms to create a Western economy as quickly as possible, even though they knew that the policy would entail hardship and political risk.

The experiment is paying off. The Polish economy, which grew at a rate of 5 percent last year, is the fastest growing economy in Europe. Germany, France, and Britain have all been outdistanced by Poland.

Some have argued that the elections last September were a major setback to reform since the former Communist Party and its ally won the largest block of votes. These results, however, were misleading. Because the initial non-Communist Polish governments were plagued by too many parties, the electoral laws were changed to give the leading parties, bonus seats. As a result, the two leading ex-Communist parties, the Democratic Left Alliance and the Polish Peasants' Party, got 66 percent of the seats in the Sejm, the parliament, although they won only 36 percent of the vote. Yet even the former Communists, who benefited from a protest vote against the hardships of economic reforms, do not appear to want to roll back the economic and political reforms of the previous governments.

How can we help Poland continue its courageous experiment? First, we can encourage lower tariffs for Polish goods in Western Europe, its largest market. The European Community still maintains trade barriers against agricultural, steel, and textile products. Poland should be allowed to sell freely in Western Europe, which must not be allowed to be a rich man's club.

The United States can also do its part. Poland has been asking to become a full-fledged member of the North Atlantic Treaty Organization [NATO]. Poland is still afraid of the rebirth of an Imperial Russia, particularly after the electoral success of the Russian extremist, Vladimir Zhirinovsky. The West should be sensitive to Poland's fears. Whether it was czars or commissars, Poland has often been a victim of its more powerful neighbor. Given Poland's history and Russia's unstable present, Poland has the right to belong to NATO. This would discourage Russian nationalists from trying to reimpose their will in all of Central Europe.

Mr. President, Poland's great experiment is the key to success for the entire former Soviet bloc. If Poland can show that economic reforms can work, other former Communist countries, including Russia, will follow its example. As Poland continues to lead the way, the least the West can do is to provide military security and an even economic playing field. Poland helped to break the back of Communist governments in 1989. We have to help it bury the remains of the Communist economic system in 1994.•

AMENDMENT NO. 1489

• Mr. COHEN. Mr. President, yesterday I offered amendment No. 1489. I ask that a detailed article by article analysis and legislative history of the amendment be printed in the RECORD.

The material follows:

S. 1869, COUNTERINTELLIGENCE IMPROVEMENT ACT OF 1994 SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 contains the title of the Act, "The Counterintelligence Improvements Act of 1994."

SECTION 2

Section 2 adds a new title VIII to the National Security Act of 1947 (50 U.S.C. 401 et seq.) to govern access to Top Secret classified information.

Section 801 establishes the requirements for eligibility to access Top Secret information.

Subsection (a) specifies that the President and Vice President, Members of Congress, Justices of the Supreme Court and judges of other federal courts established pursuant to Article III of the Constitution are eligible, by virtue of their elected and appointed positions, for access to particularly sensitive classified information needed for the performance of their governmental functions without regard to other provisions of this title. This means that the incumbents of such positions are not required to meet the security requirements of other sections of the bill (e.g. submit to background investigations or reinvestigations) applicable to government employees.

Subsection (b) provides that with respect to government employees, access to Top Secret information shall be limited to employees who have been granted access pursuant to this title, who are citizens of the United States, who require routine access to such information in the performance of official governmental functions, and who have been determined to be trustworthy based upon a background investigation and other reinvestigations undertaken pursuant to section 802, below, and have otherwise satisfied the requirements of that section.

Subsection (c) provides that the President may by regulation permit access to Top Secret information by persons other than those listed in subsections (a) and (b). The Congress intends that such regulations cover access to Top Secret information by government employees who are not citizens of the United States or who do not require routine access to such information for the performance of official functions. It is also contemplated that there will be limited circumstances where it will be in the best interest of the United States to share such information with persons who are not government employees (including contractors). Such persons may, indeed, include foreign nationals in rare circumstances. The Congress expects the President to make appropriate allowances for such access in the regulations required by section 802.

Section 802 requires the President to issue, within 180 days of enactment of this title, regulations binding upon all elements of the Executive branch. Such regulations are required, at a minimum, to establish certain requirements enumerated in this section.

Subsection (A) sets forth the minimum requirements to be met as a condition of access to Top Secret information, to include the requirements for initial and periodic background investigations, requirements to consent to the Government's access to certain types of personal records, and requirements to report certain types of information to the Government.

Subsection (A)(1) provides that no employee of the United States Government shall be given access to Top Secret information unless such person has been the subject of a background investigation and has provided consent to the investigative agency responsible for conducting the investigation permitting access to certain types of records during the period of access and for five years thereafter. Such records include financial records covered by the Right to Financial Privacy Act of 1978; consumer credit reports covered by the Consumer Credit Protection Act; and records maintained by commercial entities within the United States pertaining to travel by the subject outside the United States. (Access by government investigative agencies to this category of records does not appear to be restricted under existing law, however, private commercial concerns may be reluctant to provide such information without the consent of the consumer.)

The three provisos at the end of the subsection (A)(1) place general limitations on the authority of the investigating agency to request or disseminate such information.

Proviso (i) states that an authorized investigative agency may not request information pursuant to this section for any purpose other than making a security clearance determination. Thus, this subsection does not provide authority to request information concerning any person who is not being contemplated for access to Top Secret information or who has such access presently or within the last five years.

Proviso (ii) states that where the individual concerned no longer has access to Top Secret information, no information may be requested by an authorized investigative agency unless such agency has reasonable grounds to believe, based upon specific and articulable facts available to it, that such persons may pose a threat to the continued security of the information to which he or she had previously had access. This means that information could not be requested concerning any person who had left government service, or who remained in government service after access had been terminated, unless the investigative agency had reasonable grounds to believe such person may pose a security concern. The Congress believes that where persons who no longer have access to highly classified information are concerned, there should be a specific basis to justify Government inquiries into their personal records.

Proviso (iii) prohibits any authorized investigative agency which obtains information pursuant to this section from disseminating it to any other department, agency, or entity for any purpose other than making a security clearance determination, or for a law enforcement or foreign counterintelligence purpose. Inasmuch as such information may be highly personal, its dissemination is justified only by the most compelling needs.

Subsection (A)(2) also requires persons being given access to particularly sensitive classified information to agree, as a condition of such access, to report, in accordance with applicable regulations, any travel to foreign countries during the period of access which has not been authorized as part of the subject's official duties. The Congress recognizes there will be cases, due to geographical location of the U.S. employee concerned, where foreign travel for personal reasons could be a routine, perhaps even daily, occurrence. By providing that reports of such travel be made in accordance with applicable regulations is intended to provide flexibility to accommodate such situations.

Subsection (A)(3) requires that persons being given access to particularly sensitive classified information also report to the Federal Bureau of Investigation or to appropriate investigative authorities of the employing department, agency, or entity, any unauthorized contacts with persons known to be foreign nationals or persons representing foreign nationals, where an effort to acquire U.S. classified information is made or is apparent. For this latter purpose, unauthorized contacts do not include contacts made within the context of an authorized diplomatic relationship. In other words, where the employee is authorized to cultivate a diplomatic relationship, and in the course of such relationship, a foreign diplomat poses a question within the scope of such relationship, the answer to which would require classified information to be revealed, such an inquiry would not be required to be reported to investigative agencies. If, on the other hand, the foreign diplomat attempted to solicit classified information outside the scope of an authorized relationship, or attempted to recruit the U.S. diplomat to collect information in the future, such approach would be reportable under this section.

The final paragraph of subsection (A) provides that a failure by the subject to grant consent as required by this subsection, or make the reports required by this subsection, constitute ground for denial or termination of access to Top Secret information. The Congress does not intend that such failure will automatically result in such denial or termination, but rather that the department, agency, or entity concerned will evaluate all relevant information related to such failure and determine whether such action is appropriate.

Subsection (B) deals with requirements for reinvestigations of persons granted access to Top Secret information. Subsection (B)(1) provides that such persons will be subject to additional background investigations no less frequently than every 5 years. Although any failure to satisfy this requirement that is not solely attributable to the subject of the investigation shall not result in a loss or denial of access. The Congress recognizes that there may be practical reasons why reinvestigations are not accomplished within the five-year time frame. Where these are not solely attributable to subject, they should not result in any unfavorable action regarding his continued access. Subsection (B)(2) provides that such persons are subject to investigation at any time to ascertain whether they continue to meet the requirements for access. Thus, should an authorized investigative agency receive information at any time which may suggest such person may no longer meet the security requirements for access, an investigation may be undertaken.

Subsection (C) requires that the regulations address the matter of access to Top Secret information by persons other than the officials lists in section 801(A) above, or government employees eligible for access to such information as provided in section 801(B). The subsection provides that the President or other officials designated by the President for this purpose, may authorize access to such information by such persons only where such access is essential to protect or further the national security interests of the United States.

Subsection (D) requires that the President designate a single office within the Executive branch to monitor the implementation and operation of this title within the Executive branch, and provide an annual report to the President and appropriate congressional committees describing the operation of this title and recommending any needed improvements.

The bill requires that a copy of the implementing regulations required by this section be provided to the two intelligence committees 30 days prior to their effective date.

Section 803 provides authority for the President, or officials designated by the President for this purpose, to waive the provisions of this title and the regulations implementing this title for individual cases involving U.S. citizens or persons admitted to the United States for permanent residence, when essential to protect or further the national security interests of the United

States, provided all such waivers are made a matter of record, reported to the oversight office established pursuant to section 802, and are available for review by the intelligence committees.

The Congress recognizes there will be extraordinary circumstances when the president (or other senior officials) could be justified in waiving the investigative requirements or the consent requirements for particular persons as a condition of their receiving access to particularly sensitive classified information. The Congress believes, however, that such waiver authority ought to be limited to specific individuals who are either citizens of the United States or persons who are admitted to the United States for permanent residence. Such waiver authority is not granted to permit the exemption of entire classes of persons, or the employees of a particular department or agency, or to provide access for particular purposes (e.g., diplomatic exchanges). Should the President wish to exempt classes of persons or entire departments or agencies from the requirements of this title, or provide for access by foreign nationals under limited circumstances, such exemptions should be made in the regulations issued pursuant to section 802, which are reported to the intelligence committees, rather than made subject to individual waivers pursuant to section 803.

Section 804 contains the definitions of terms used in this title.

Section (a) defines the term "national security" as referring to the national defense and foreign relations of the United States.

Subsection (b) defines the term "information classified in the interest of national security" or "classified information" as meaning any information originated by or on behalf of the United States Government, the unauthorized disclosure of which would cause damage to the national security, and which has been marked and is controlled pursuant to Executive Order 12356, dated April 2, 1982, or successor orders, or the Atomic Energy Act of 1954.

Subsection (c) defines the term "Top Secret information" as information classified in the interest of national security, the unauthorized disclosure of which would cause exceptionally grave damage to the national security.

Subsection (d) defines the term "employee" for purposes of this title as including any persons who receives a salary or compensation of any kind from the United States Government, is a contractor or unpaid consultant of the United States Government, or otherwise acts for or on behalf of the United States Government, but does not include the President or Vice President, Members of Congress, Justices of the Supreme Court or judges of federal courts established pursuant to Article III of the Constitution.

Subsection (e) defines the term "authorized investigative agency" means an agency authorized by law or regulation to conduct investigations of persons who are proposed for access to Top Secret information to ascertain whether such persons satisfy the criteria for obtaining and retaining a security clearance. Such agencies would include the Federal Bureau of Investigation, the Defense Investigative Service, and other departments and agencies who are authorized to conduct such investigations.

Section 805 provides that this title shall take effect 180 days from its enactment. This period is necessary in order to allow time for the President to issue the implementing regulations required by section 802 prior to the effective date of this title.

SECTION 3

Section 3 of the bill adds a new title IX to the National Security Act of 1947 (50 U.S.C. 401 et seq.) to provide special requirements for the protection of cryptographic information. Persons with access to such information necessarily have the capability of inflicting grave damage upon the national security by enabling unauthorized persons to read or understand an unlimited number of U.S. communications at all levels of classification. In view of the peculiar sensitivity of such information, the Congress believes that special security measures should be imposed on persons who have access to this information.

It is the intent of the Congress, however, that only those Executive branch employees or contractors who have extensive involvement with, or in-depth knowledge of, classified cryptographic information need to be covered by the proposed title. This would include persons who develop U.S. codes or ciphers, persons who build or install devices or equipment which contain such codes or ciphers, and persons who are employed in locations where large volumes of classified information are processed by such devices or equipment, such as communications centers. It is not intended that persons who have access to cryptographic devices or equipment designed for personal use or office use should be covered by this title.

Section 901 establishes minimum uniform security requirements for Executive branch employees who are granted access to classified cryptographic information or routine, recurring access to any space in which classified cryptographic key is produced or processed, or is assigned responsibilities as a custodian of classified cryptographic key. The President may provide latitude in the regulations implementing this title for departments and agencies to impose additional, more stringent security measures upon such persons where circumstances may warrant.

Two basic requirements are imposed upon persons covered by the title. Subsection (a)(1)(A) requires that they meet the security requirements established by section 802 of the Act, as persons with access to particularly sensitive information. Thus, persons covered by this title would also be subject to initial background investigations, reinvestigations not less than every five years, and unscheduled investigations as appropriate, to ensure they continue to meet the standards for access to classified cryptographic information, regardless of the level of security clearance such persons may otherwise have. They would also be required to provide their consent to the authorized governmental investigative authorities having access to the categories of records set forth in section 802.

Subsection (a)(1)(B) requires that persons covered by this title also be subject to periodic polygraph examinations conducted by appropriate governmental authorities, limited in scope to questions of a counterintelligence nature, during the period of their access to classified cryptographic information. This provision does not require such polygraph examinations for all such persons, but it does make such persons, regardless of the department or agency where they may be employed, subject to such examinations on an unscheduled basis while such access is maintained. In accordance with the implementing regulations required by section 902, it is anticipated that departments and agencies with employees or contractors covered by this title would establish or acquire a sufficient capability to conduct such examinations to maintain a credible deterrent to persons with access to such information.

The Congress also reemphasizes that this section provides for minimum standards. It is not the intent of the provision to restrict the use of the polygraph at the Central Intelligence Agency and National Security Agency, where polygraph examinations are routinely required of all employees and are not limited to questions of a counterintelligence nature.

Subsection 901(a)(2) provides that any refusal to submit to a counterintelligence-scope polygraph examination shall constitute grounds to remove such person from access to classified cryptographic information. It is not intended, however, that such person be subjected to any additional personnel or administrative action, including any adverse action on his or her security clearance, as a result of such refusal.

Moreover, subsection 901(a)(2) goes on to provide that no person shall be removed from access to classified cryptographic information or spaces based solely upon the interpretation of the machine results of a polygraph examination, which measure physiological responses, unless the head of the department or agency concerned determines, after further investigation, that the risk to the national security under the circumstances is so potentially grave that access cannot safely be permitted.

The Congress recognizes that a polygraph examination in essence measures certain physiological responses produced by answers to questions posed to the subject. Such responses might reflect deception on the part of the subject, but they might also reflect other, wholly innocent stimuli, both mental and physical. Indeed, while expert opinion varies in terms of how often the interpretation of polygraph results can be relied upon to show lying or deception, the Congress is aware of no expert who contends that interpretation of polygraph results provides an infallible indication of lying or deception. Accordingly, the Congress believes that an interpretation of polygraph results should not be the sole basis for denial of access to classified cryptographic information or spaces. It intends that where the results of such examinations do indicate lying or deception to key counterintelligence questions, that these discrepancies be resolved, where possible, through interviews with the subject and such further investigation as may be warranted. If such further investigation does not provide an independent basis for removal from access, such access should be granted or maintained unless the head of the department or agency concerned determines, in view of all the circumstances involved and the potentially grave risk to the national security, that access should not be permitted.

Subsection 901(b) sets forth the definitions of the terms used in this section.

Subsection (b)(1) defines the term "classified cryptographic information" as any information classified pursuant to law or Executive order which concerns the details of (A) the nature, preparation, or use of any code, cipher, or cryptographic system of the United States; or (B) the design, construction, use, maintenance, or repair of any cryptographic equipment. The proviso to this definition specifically excludes information concerning the use of cryptographic systems or equipment required for personal or office use.

This term is thus intended to cover classified information which reveals or contains detailed information concerning U.S. codes and cryptographic equipment, to include information concerning the nature and devel-

opment of such codes or equipment, and the design, construction, use, maintenance or repair of such equipment. ("Cryptographic equipment" is defined in subsection (b)(4) as any device, apparatus, or appliance used by the United States for authenticating communications, or disguising or concealing communications or their meaning.) The definition of "classified cryptographic information" is not intended, however, to cover persons who use cryptographic equipment that has been developed for personal or office use, such as a secure telephone, where such person is not also exposed to detailed information concerning the design, construction, use, maintenance or repair of such equipment. The term is intended to cover individuals, however, who require access to detailed information concerning the use of encoding equipment for other than personal or office use. For example, persons employed at government communications centers which process large volumes of classified information would be persons who fall within this definition.

Subsection b(2) defines the term "custodian of classified crytographic key" as meaning positions that require access to classified cryptologic key beyond that required to use or operate cryptographic equipment for personal or office use, future editions of such key, or such key used for multiple cryptographic devices. The term "classified cryptographic key", as defined in subsection (b)(3), refers to the information, which may take several forms, needed to set up and periodically change the operations of cryptographic equipment or devices to enable them to communicate in a secure manner.

Similar to the definition of "classified cryptographic information," it is not the intent of the Congress to cover by this definition persons who are custodians of, or otherwise have access to, "classified cryptographic key" for personal or office use. Thus, persons who have access to such key in order to operate a secure telephone located in a single office are not covered by this definition. On the other hand, it is intended that persons who have access to such key in order to operate multiple cryptographic devices or who operate cryptographic devices which are used to process large volumes of classified information originating in multiple locations, such as government communications centers, would be covered by this definition.

Subsection (b)(5) defines the term "employee" to mean any person who receives a salary or compensation of any kind from a department or agency of the Executive branch, or is a contractor or unpaid consultant of such department or agency.

Subsection (b)(6) makes clear that the term "head of a department or agency" refers to the highest official who exercises supervisory control of the employee concerned, and does not include any intermediate supervisory officials who may otherwise qualify as heads of agencies within departments. For example, the Secretary of Defense would constitute the "head of the department" for all employees of the Department of Defense, and not the secretary of a military department or the director of a Defense agency.

Subsection (b)(7) defines the phrase "questions of a counterintelligence nature" as meaning questions specified to the subject of a polygraph examination in advance limited solely to ascertain whether such person is engaged in, or planning, espionage against the United States or knows persons who are so engaged. It is not intended that this definition encompass any question relating to the life-style of the subject, such as his or her sexual orientation, prior or present use of drugs or alcohol, etc. The sole thrust of such questions must be to ascertain whether the subject is acting on behalf of a foreign government, is involved in planning such activities, or knows others who are so engaged.

Section 902 of the bill requires the President to issue regulations to implement this title within 180 days of its enactment, and to provide copies of such regulations to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

SECTION 4

Section 4 of the bill would amend section 1104 of the Right to Financial Privacy Act of 1978 by adding a new subsection (d) to this section. The purpose of the amendment is to permit a person who is being considered for access to Top Secret information, as that term is defined in section 2 of the bill, to provide his or her consent to authorized investigative agencies of the U.S. Government obtaining access to his or her financial records, as defined by the Right to Financial Privacy Act, as a condition of receiving and maintaining access to such information.

This provision is required because subsection 1104(a) limits the period a person may provide consent to a Government authority having access to his or her financial records to ninety days.

This section is also necessary to supplement and provide legal effect to subsection 803 [as added by section 2 of the bill] which requires that all persons who are granted access to Top Secret information provide their consent for authorized investigative agencies to be able to obtain access to their financial records pursuant to the Right to Financial Privacy Act of 1978.

The new subsection (d)(1) provides that notwithstanding the provisions of subsection 1104(a) (which limits the period a person may consent to access by government authority to his or her financial records to 90 days), a "customer", as defined in section 1101(5) of the Right to Financial Privacy Act of 1978, who is the subject of a personnel security investigation conducted by an authorized investigative agency of the U.S. Government as a condition of being granted access or maintaining access to Top Secret information, as defined by section 803(b) of the National Security Act of 1947, may authorize nonrevocable disclosure of all financial records maintained by financial institutions for the period of the customer's access to such information and for up to five years after such access to such information has been terminated, by such investigative agency, for an authorized security purpose.

Subsection (d)(2) provides that the consent given under subsection (1) must be contained in a signed and dated statement which identifies the financial records which are authorized to be disclosed. Such statement may also authorize the disclosure of financial records of accounts opened during the period covered by the consent agreement which are not identifiable at the time the account is opened. It is anticipated that such accounts would be covered by a general statement, identifying by category the types of accounts for which access is authorized, e.g. bank accounts, credit card accounts, etc. At the time of periodic reinvestigations of the subject, the investigating agency authorized to conduct the investigation concerned may request the subject to identify any accounts which had been opened since the date the consent agreement was signed as part of the investigative process.

In addition, subsection (d)(2) requires the investigating agency concerned to provide a copy of the consent agreement to any financial institution from which disclosure is sought, together with the certification required pursuant to section 1103((b) of the Right to Financial Privacy Act of 1978, that the Government authority concerned has complied with the applicable provisions of the Act. In the circumstances contemplated, such certification would encompass the following elements: (1) that the customer of the financial institution is the subject of a background investigation required by law for access to Top Secret information pursuant to this title; (2) that the Government authority concerned is the authorized investigating agency responsible for such investigation; (3) that the request is being made during the period in which the customer has authorized access pursuant to the consent agreement provided the financial institution; and (4) that, if the accounts were not specifically identified by the consent agreement, that the financial records being sought are, in fact, records covered by such consent agreement.

Subsection (d)(3) makes clear that the right of the customer, established pursuant to subsection 1104(c) of this section, pertains to any disclosures made pursuant to subsection (d). This means that the right of the customer to obtain a copy of the record required to be made by the financial institution of any disclosure to a Government authority, (unless the Government authority has obtained a court order pursuant to section 1109 of the Act), is preserved in the circumstances contemplated by subsection (d).

Subsection (d)(4) requires an annual report to the two intelligence committees by the office established pursuant to section 802(D) of the National Security Act of 1947 [as added by section 2 of the bill] to monitor the implementation of these policies, which fully informs the committees concerning all requests for financial records made pursuant to this section. It is contemplated that such reports shall, at a minimum, identify the investigative agencies making such requests, provide the number of requests each such agency has made during the reporting period, and describe by appropriate category the uses made of such information.

SECTION 5

Section 5 amends chapter 37 of title 18, United States Code, to add a new section, creating a new criminal offense for the possession of espionage devices where the intent to use such devices to violate the espionage statutes can be shown.

It is the intent of Congress to permit the Government to prosecute the mere possession of espionage devices where intent to commit espionage can be shown, without having to prove that information relating to the national defense had, in fact, been transmitted to a foreign government, and without having to prove a conspiracy to commit espionage involving a second person and an overt act in furtherance of the conspiracy by either of the two parties, as required by existing law.

Subsection (a) adds a new section 799a at the end of chapter 37 of title 18, United States Code, which provides that any person who knowingly maintains possession of any electronic, mechanical, or other device or equipment, the design and capability of which renders it primarily useful for the purpose of surreptitiously collecting or communicating information, with the intent to utilize such device or equipment to undertake actions which would violate sections 793, 794,

794a [as added by section 6, below] or 798 of title 18, or section 783(b) of title 50, United States Code, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

SECTION 6

Section 6 also amends chapter 37 of title 18, United States Code, to create a new criminal offense for any person who knowingly sells or transfers for any valuable consideration to a person whom he knows or has reason to believe to be an agent or representative of a foreign government, any classified document or material that such person knows to be marked or designated as "Top Secret," or which such person knows to have had such marking or designation removed. Subsection (b) also provides that in any prosecution under this section, whether or not the document or material has been properly marked or designated pursuant to applicable law or Executive order is not an element of the offense. This subsection specifically provides, however, that it shall be a defense to any prosecution under this section that the information or document in question had been officially released to the public by an authorized representative of the United States Government prior to the sale or transfer in question.

SECTION 7

Section 7 amends title 93 of title 18, United States Code, relating to the responsibilities of public officers and employees, to provide that any officer or employee of the United States, or person acting for or on behalf of the United States, who becomes possessed of "Top Secret" documents or materials, who knowingly removes such documents or materials without authority and retains them at an unauthorized location, shall be fined not more than $1,000, or imprisoned for not more than one year, or both.

SECTION 8

Section 8 amends chapter 211 of title 18 of the United States Code by adding a new section 3239 to establish jurisdiction in certain U.S. federal courts to try cases involving violations of the espionage laws where the alleged misconduct takes place outside the United States.

Specifically, the U.S. District Court for the District of Columbia and the U.S. District Court for the Eastern District of Virginia are granted jurisdiction over any offense involving a violation of the U.S. statutes enumerated in the section which were begun or committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district.

SECTION 9

Section 9 amends section 3681 of title 18, United States Code, to provide for expansion of the forfeiture provision to certain espionage offenses that are not enumerated in the existing law. These include violations of 18 U.S.C. 793 (gathering defense information with the intent to damage the United States); 18 U.S.C. 798 (disclosure of communications intelligence); 50 U.S.C. 783(b) (communication of classified information by a government employee to a foreign government); and the new criminal offenses which are created by this Act (18 U.S.C. 799a possession of espionage devices, added by section 5, and 18 U.S.C. 794a the sale or transfer of "Top Secret" documents added by section 6).

The amendment to section 3681 also covers crimes of espionage that may be prosecuted under the Uniform Code of Military Justice, (Chapter 47 of Title 10, United States Code) or convictions in foreign courts which, if they occurred in the United States, would constitute offenses under the provisions of the United States Code enumerated above.

SECTION 10

Section 10 amends 5 U.S.C. 8312 to provide that an individual may be denied an annuity or retired pay by the United States, to which he or she may otherwise have been entitled, if he or she is convicted in a foreign country of offenses involving espionage against the United States for which such annuity or retired pay could have been denied had such offenses occurred within the United States.

A new subsection (d) is added to section 8312 which provides that for purposes of section 8312 an offense is established if the Attorney General certifies to the agency employing or formerly employing the person concerned that—

(1) the individual has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances that would violate the provisions of law enumerated in subsections (b) and (c) of section 8312, had such conduct occurred within the United States, and that such conviction was not being appealed or that final action had been taken on such appeal within the foreign country concerned;

(2) that such conviction was obtained in accordance with procedures that afforded the defendant due process rights comparable to those provided by the U.S. Constitution, and such conviction was based upon evidence that would have been admissible in U.S. courts; and

(3) that such conviction occurred after the effective date of subsection (d).

The proviso to subsection (d) also provides that any such certification made by the Attorney General is subject to review by the United States Court of Claims based upon the application of the person concerned, or his or her attorney, alleging that the conditions certified by the Attorney General have not been satisfied in this particular case. If the court determines, after appropriate review, that the conditions established by the statute have not been met, it shall order the annuity or retirement benefit restored and shall order any payments which may have been withheld or denied to be paid.

SECTION 11

Section 11 would amend the Consumer Credit Protection Act by inserting "(a)" before the existing paragraph of section 608 (15 U.S.C. 1681f.) and by adding four new subsections.

Subsection (b) would provide that, notwithstanding the provisions of section 604 of the Act of this Title, a consumer reporting agency shall furnish a consumer report to the FBI when presented with a request for a consumer report made pursuant to this subsection by the FBI provided that the FBI Director, or the Director's designee, certifies in writing to the consumer reporting agency that such records are sought in connection with an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe the person to whom the requested consumer report relates is an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

It is the intent of Congress that, if the Director delegates his function under subsections (b) and (c) to a designee, he will delegate it no further down the FBI chain of command than the level of Deputy Assistant Director. The Congress also recognizes that the Director may delegate to the head or acting head of an FBI field office the authority to make the required certification in exigent circumstances where time is of the essence, provided that the Director is notified as soon as possible for the circumstances involved.

The Congress also accepts the FBI's assurance that it will not under any circumstances rely upon the substantive financial information from consumer reports obtained under this section without verifying such information with the institution concerned. As reflected in other provisions of the Consumer Credit Protection Act, Congress has long been concerned that credit reports may be inaccurate. The FBI has advised that to rely solely upon such information as the basis for further investigative inquiry without verifying its accuracy would constitute poor investigative practice. The Congress recognizes it could lead to unjustified intrusions upon the privacy of innocent Americans. The best evidence would be contained in the records of the financial institutions located through the use of consumer credit reports. The Congress expects that in its internal regulations implementing this provision the FBI will permit use of unverified credit bureau ratings or financial information only to locate actual financial transaction records on record with financial or commercial entities.

Subsection (c) would provide that, notwithstanding the provisions of section 604 of the Act, a consumer reporting agency shall furnish identifying information respecting any consumer, limited to name, address, former addresses, places of employment, or former places of employment, to a representative of the FBI when presented with a written request signed by the FBI Director, or the Director's designee, stating that the information is necessary to the conduct of an authorized foreign counterintelligence investigation."

Under current law (50 U.S.C. 1681f.) the FBI may obtain such identifying information upon request, but there is no requirement that a consumer reporting agency comply with the FBI's request and no limitation on disclosure of the request to the consumer. It is the intent of the Congress that any FBI request for information under this provision must meet the standards of applicable Attorney General's guidelines for obtaining identifying information. In addition, there should be reason to believe that the person has been in communication with a foreign power or an agent of a foreign power. The Congress understands and expects that the FBI would continue to request identifying information under the provision of existing law, but in such case the consumer reporting agency would not be compelled to comply with the FBI's request and would be permitted to disclose the request to the consumer. The Congress intends that the FBI should continue to compensate consumer credit reporting companies only for providing identifying information voluntarily as under existing law.

Subsection (d) would provide that no consumer reporting agency, or officer, employee, or agent of such institution, shall disclose to any person that the FBI has sought or obtained a consumer report or identifying information respecting any consumer under this section. Congress has enacted similar provisions to protect the security of foreign counterintelligence investigations in the Right to Financial Privacy Act and the Electronic Communications Privacy Act. The purpose is to prevent premature disclosure of a pending investigation

and to enable the FBI, rather than the consumer reporting agency, to make whatever disclosures of the FBI's inquiries may be appropriate under existing Attorney General Guidelines. The language is not intended to preclude appropriate disclosure related to requests by relevant Congressional oversight committees.

Finally, subsection (e) would require that on an annual basis the FBI Director shall fully inform the House and Senate Intelligence Committees concerning the FBI's exercise of its authority under these provisions. As part of this report, the Congress intends that the FBI should inform the House or Senate Intelligence Committee of the facts and circumstances that are the basis for obtaining information concerning any domestic or group substantially composed of United States persons. It is not intended, however, that the report identify particular individuals whose consumer credit records were obtained pursuant to this section.

SECTION 12

Section 12 amends Chapter 204 of title 18, United States Code, to provide the Attorney General with discretionary authority to pay rewards for information leading to the arrest or conviction of espionage against the United States or leading to the prevention or frustration of such acts.

Subsection (a) renumbers the existing provisions of section 3071, which provides discretionary authority for the Attorney General to pay rewards for information leading to the arrest or conviction of persons for acts of terrorism against the United States, as subsection (a) of subsection 3071, and adds a new subsection (b) to this section.

The new subsection (b) provides that, with respect to acts of espionage involving or directed at United States information classified in the interests of national security, the Attorney General may reward any individual who furnishes information in either of three categories: (1) information leading to the arrest or conviction in any country of an individual or individuals for commission of an act of espionage against the United States; (2) information leading to the arrest or conviction of individuals in similar circumstances for conspiring to commit an act of espionage against the United States; and (3) information leading to the prevention or frustration of an act of espionage against the United States.

Subsection (b) of section 12 changes the maximum amount the Attorney General can pay as a reward for information provided under section 3071 from $500,000 to $1 million.

Subsection (c) amends the list of definitions in 18 U.S.C. 3077 to add definitions for two terms used in the amendments to section 3071. The term "act of espionage" is defined as an activity that is a violation of section 794, 794a [as added by section 6 of this Act], 798, or 799a [as added by section 5 of this Act] of title 18, or section 783 of title 50, United States Code. The term "United States information classified in the interest of national security" is defined as information owned or possessed by the United States Government concerning the national defense and foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure and that has been so designated.

SECTION 13

Sec. 13. To provide a court order process for physical searches undertaken for foreign intelligence purposes.

Sec. 13 amends the Foreign Intelligence Surveillance Act of 1978 to add a new Title IV establishing statutory procedures for the approval and conduct of physical searches within the United States for foreign intelligence purposes. To the extent that the provisions of this title are the same as the provisions for electronic surveillance under FISA, the following section-by-section analysis restates in full the applicable FISA legislative history.

AUTHORIZATION OF PHYSICAL SEARCHES FOR FOREIGN INTELLIGENCE PURPOSES

Section 401(a) authorizes submission of applications to the Foreign Intelligence Surveillance Court for an order approving a physical search in the United States, for the purpose of collecting foreign intelligence information, of the property, information or material of a foreign power as defined in section 101(a) (1), (2), and (3) of the Foreign Intelligence Surveillance Act (FISA), or the premises, property, information or material of an agent of a foreign power or a foreign power as defined in section 101(a) (4), (5), and (6) of FISA. Applications may be submitted only if the President has, by prior written authorization, empowered the Attorney General to approve the submission. This section does not require the President to authorize each specific application. He may authorize the Attorney General generally to seek applications under this title or upon such terms and conditions as the President wishes, so long as the terms and conditions are consistent with this title.

The reference to Presidential authorization does not mean that the President has independent, or "inherent," authority to authorize physical search in the United States for the purpose of collecting foreign intelligence in any way contrary to the provisions of this title. As stated in section 406(a), the procedures of this bill are the exclusive means by which physical search, as defined in section 409(b), may be conducted in the United States for the purpose of collecting foreign intelligence.

Subsection (a) also authorizes a judge to whom an application is made to grant an order for physical search in the United States, for the purpose of collecting foreign intelligence information, of the specified premises, property, information or material, "notwithstanding any other law." The "notwithstanding any other law" language is intended to make clear that, notwithstanding the Vienna Convention on Diplomatic Relations, the activities authorized by this bill may be conducted. The "notwithstanding any other law" wording also deals with the contention that 28 U.S.C. 1251, which grants the Supreme Court exclusive original jurisdiction over all actions against ambassadors of foreign states, would prevent a lower court from approving a physical search directed at a foreign ambassador.

It is noted, however, that the applications and orders authorized by this subsection do not apply to physical search of the premises of an "official" foreign power, as defined in section 101(a) (1), (2), or (3) of FISA. The Congress has determined that the balance between security and civil liberties does not require prior judicial involvement in physical search of premises of this category of targets. The physical search of premises of an "official" foreign power without a court order may be conducted only pursuant to regulations issued by the Attorney General, as provided in section 406(b). The physical search of premises of an "official" foreign power without a court order may include the search of property, information, or material that is located on those premises and is owned, used, or possessed by, or in transit from, that foreign power. However, the Congress does not intend that searches of premises of "official" foreign powers without court orders include searches of property "in transit to" such a foreign power that may be located on those premises, but has not yet come into full possession or use by that foreign power. For example, sealed packages delivered to an "official" foreign power from a person other than an officer or employee of that foreign power may not be searched without a court order, even if they are located on the premises of an "official" foreign power. In that circumstance, the court order is required because of the privacy interest of the person who is transmitting the package which has not yet been opened by the intended recipient.

Section 401(b) provides that the Foreign Intelligence Surveillance Court, as defined in section 409(e), shall have jurisdiction to hear applications for and grant orders approving physical search for the purpose of obtaining foreign intelligence anywhere within the United States under the procedures set forth in this Act. No judge shall hear the same application which has been denied previously by another judge. Subsection (b) also provides that, if any judge denies an application for an order authorizing a physical search under this Act, such judge shall provide immediately for the record a written statement of each reason for his decision. On motion of the United States, the record shall be transmitted, under seal, to the Court of Review, as defined in section 409(f). As under FISA, this provision is intended to make clear that if the Government desires to pursue an application after a denial, it must seek review in the special court of review; it cannot apply to another judge of the Foreign Intelligence Surveillance Court. Obviously, where one judge has asked for additional information before approving an application, and that judge is unavailable when the Government comes forward with such additional information, the Government may seek approval from another judge. It would, however, have to inform the second judge about the first application.

The Congress intends that, as under FISA, the judges of the Foreign Intelligence Surveillance Court should have an opportunity to examine, when appropriate, the applications, orders, and statements of reasons for decisions in other cases.

Subsection (c) provides that the Court of Review shall have jurisdiction to review the denial of any application made under this title. If such court determines that the application was properly denied, the Court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

Subsection (d) provides that judicial proceedings under this title shall be concluded as expeditiously as possible. The record of proceedings under this title, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of Central Intelligence. The Congress intends that such measures shall be the same as those established pursuant to FISA and thus shall include such document, physical, personnel, or communications security measures as are necessary to protect information concerning proceedings under this title from unauthor-

79-059 O—97 Vol. 140 (Pt. 4) 12

ized disclosure. As under FISA, such measures may also include the use of secure premises provided by the executive branch to hear an application and the employment of executive branch personnel to provide clerical and administrative assistance.

APPLICATION FOR AN ORDER

Section 402(a) specifies what information must be included in the application for a court order. Applications must be made by a Federal officer in writing under oath or affirmation. If the officer making the application is unable to verify the accuracy of the information or representations upon which the application is based, the application should include affidavits by other officers who are able to provide such personal verification. Thus, for example, if the applicant was an attorney in the Department of Justice who had not personally gathered the information contained in the application, it would be necessary that the application also contain an affidavit by an officer personally attesting to the status and reliability of any informants or other covert sources of information. By this means the source of all information contained in the application and its accuracy will have been sworn to by a named official of the U.S. Government and a chain of responsibility established for judicial review.

Each application must be approved by the Attorney General, who may grant such approval if he finds that the appropriate procedures have been followed. The Attorney General's written approval must indicate his belief that the facts and circumstances relied upon for the application would justify a judicial finding of probable cause to believe that the target is a foreign power or an agent of a foreign power, that the premises or property to be searched contains foreign intelligence information, and that the premises or property to be searched is owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power as well as his belief that all other statutory criteria have been met.

Paragraph (1) of subsection (a) requires that the application include the identity, if know, or a description of the target of the search. If the Government knows the identity of the target of the search, it is required to identify him. The target may be an individual or an entity.

The word "target" is nowhere defined in this title, although it is a key term because the standards to be applied differ depending on whom or what is targeted. The Congress intends that the target of a physical search is the individual or entity about whom or from whom information is sought. In most cases this would be the individual or entity who owns, uses, or possesses the premises or property to be searched. In some cases, however, it would be the individual or entity to or from whom property is in transit. See section 402(a)(4)(C).

Generally, under this title, targeting foreign powers may be accomplished on a less strict basis than targeting of agents of foreign powers. An individual, of course, cannot be a foreign power, only an agent of a foreign power. Therefore, if the search is to be directed at an individual about whom information is sought, that individual is the target and must be shown to be an "agent of a foreign power." Where two or three individuals are associated with one another, it might be argued that they are an "association" or an "entity," which, if the proper showing is made, could be considered a "foreign power." (This would especially be true if the individuals engaged in "international terrorism" and thereby might be a group engaged in international terrorism which is a defined "foreign power.") This does not mean, however, that property of each of these individuals can then be individually searched merely upon a showing that together they are a "foreign power." Rather, to search the property of each individual would require a showing that each was an "agent of a foreign power," with its higher standard.

Often, however, associations or entities will act in a "corporate" capacity, as distinguished from the acts of an individual in the association or entity. For example, corporations own or lease property, enter into contracts, and otherwise act as an entity distinct from the individuals therein. The fact that an individual officer or employee, acting in his official capacity, may sign the deed, lease, or contract on behalf of the corporation does not vitiate the fact that it is the corporation rather than the individual who is acting. Thus, it is possible to target a "foreign power" in such circumstances. In addition, it will be possible under this title to target a "foreign power" in certain rare cases, where the facility targeted, while owned, used, or possessed by the entity, is in fact dedicated to the use of one particular member of the entity, for instance, where each officer is assigned his own office. However, in order to justify the target as a "foreign power" rather than as an "agent of a foreign power," the information sought must be concerning the entity, not the individual.

The judge in considering the application, wherever the Government claims the target is a "foreign power," and especially where U.S. persons are officers or employees of the "foreign power," must scrutinize the description of the information sought, and the property or premises to be searched, see section 402(a)(3), infra, to determine whether the target is really the "foreign power" rather than an "agent of a foreign power." The judge must also closely scrutinize the minimization procedures to assure that where the target is a "foreign power," the individual U.S. persons who may be members or employees of the power are properly protected.

Paragraph (2) requires that the application contain evidence of the authority to make this application. This would consist of the Presidential authorization to the Attorney General and the Attorney General's approval of the particular application.

Paragraph (3) requires that the application identify the Federal officer making the application; that is, the name of the person who actually presents the application to the judge. In addition, paragraph (3) requires that the application contain a detailed description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered. The description should be as specific as possible and should detail what type of premises or property are likely to be searched and what types of information, material, or property are likely to be seized, reproduced, or altered. Such specifics are necessary if the judge is meaningfully to assess the sufficiency and appropriateness of the minimization procedures.

Paragraph (4) requires a statement of the facts and circumstances justifying the applicant's belief that the target of the physical search is a foreign power or an agent of a foreign power, that the premises or property to be searched contains foreign intelligence information, and that the premises or property to be searched is owned, used, processed by, or is transit to or from a foreign power or an agent of a foreign power.

Paragraph (5) requires a statement of the proposed minimization procedures.

The statement of procedures required under this paragraph should be full and complete and normally subject to close judicial review. It is the intention of the Congress that minimization procedures be as uniform as possible for similar physical searches. The application of uniform procedures to identical searches will result in a more consistent implementation of the procedures, will result in improved capability to assure compliance with the procedures, and ultimately means a higher level of protection for the rights of U.S. persons.

Paragraph (6) requires the application to contain a statement of the manner in which the physical search is to be conducted. The statement should be as detailed and specific as possible in light of the need for the judge in his order to specify the manner in which the physical search is to be conducted. For instance, where physical entry will be required, the application should so state indicating generally the circumstances involved.

Paragraph (7) requires a statement of the facts concerning all previous applications that have been made to any judge under this title involving any of the persons, premises, or property specified in the application, and the action taken on each previous application.

Paragraph (8) requires a statement of the facts concerning any search that did not require a warrant due to exigent circumstances, as described in section 406(b), which involves any of the persons, premises, or property specified in the application. Pursuant to section 406(b), the court will already have received a full report from the Attorney General on any such search, including a description of the exigent circumstances.

Paragraph (9) requires that the application contain a statement that the purpose of the physical search is to obtain foreign intelligence information. This statement should be sufficiently detailed so as to state clearly what sorts of information the Government seeks. A simple designation of which subdefinition of "foreign intelligence information" is involved will not suffice. There must be an explanation of the determination approved by the Attorney General that the information sought is in fact foreign intelligence information. The requirement that this judgment be explained is to ensure that cases are considered carefully and to avoid statements that consist largely of boilerplate language. The Congress does not intend that the explanations be vague generalizations or standardized assertions. The applicant must similarly explain that the purpose of the physical search is to obtain the described foreign intelligence information. This requirement is designed to prevent physical searches of one target when the true purpose of the search is to gather information about another individual for other than foreign intelligence purposes. It is also designed to make explicit that the sole purpose of such physical search is to secure "foreign intelligence information," as defined, and not to obtain some other type of information. The applicant must similarly explain why the information cannot be obtained through less intrusive techniques, see section 403(a)(1)(C). This requirement is particularly important in those cases when U.S. citizens or resident aliens are the target of the physical search.

Section 402(b) provides that the judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 403. Such additional proffers would, of course, be

made part of the record and would be subject to the security safeguards applied to the application and order.

ISSUANCE OF AN ORDER

Section 403(a) specifies the findings the judge must make before he grants an order approving physical search under this title. While the issuance of an order is mandatory if the judge finds that all the requirements of this section are met, the judge has the discretionary power to modify the order sought, such as with regard to the period of authorization or the minimization procedures to be followed. Modifications in the minimization procedures should take into account the impact of inconsistent procedures on successful implementation.

Paragraph (1) of this subsection requires the judge to find that the President has authorized the Attorney General to approve such applications.

Paragraph (2) requires the judge to find that the application has been made by a Federal officer and that the Attorney General has approved the application being submitted.

Paragraph (3) requires a finding that there is "probable cause" to believe that the target of the physical search is a foreign power or an agent of a foreign power, that the premises or property to be searched are owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power, and that physical search of such premises or property can reasonably be expected to yield foreign intelligence information which cannot reasonably be obtained by normal investigative means.

In determining whether "probable cause" exist under this section, the court should keep in mind that this standard is not the ordinary "probable cause" that a crime is being committed, applicable to searches and seizures for law enforcement purposes. Where a U.S. person is believed to be an "agent of a foreign power," for example, there must be "probable cause" to believe that he is engaged in certain activities, but the criminality of these activities need not always be demonstrated to the same degree. The key words—"involve or may involve"—indicate that the ordinary criminal probable cause standard does not apply with respect to the showing of criminality. For example, the activity identified by the Government may not yet involve the criminality, but if a reasonable person would believe that such activity is likely to lead to illegal activities, this would suffice. It is not intended that the Government show probable cause as to each and every element of the crime likely to be committed.

The determination by the court as to probable cause whether the person is engaging in certain activities or, for example, whether an entity is directed and controlled by a foreign government or governments, should include consideration of the same aspects of the reliability of the Government's information as is made in the ordinary criminal context—for example, the reliability of any informant, the circumstances of the informant's knowledge, the age of the information relied upon. On the other hand, all of the same strictures with respect to these matters which have developed in the criminal context may not be appropriate in the foreign intelligence context. That is, in the criminal context certain "rules" have developed or may develop for judging reliability of information. See, for example, SPINELLI v. UNITED STATES, 393 U.S. 410 (1969). It is not the intention of Congress that these "rules" necessarily be applied to consideration of probable cause under this title. Rather it is the intent of Congress that in judging the reliability of the information presented by the Government, the court look to the totality of the information and consider its reliability on a case-by-case basis.

In addition, in order to find "probable cause" to believe the subject of the surveillance is an "agent of a foreign power, as defined in section 101(b) of FISA, the judge must, of course, find that each and every element of that status exists. For example, if a U.S. citizen or resident alien is alleged to be acting on behalf of a foreign entity, the judge must first find probable cause to believe that the entity is a "foreign power" as defined in section 101(a) of FISA. There must also be probable cause to believe the person is acting for or on behalf of that foreign power and probable cause to believe that the efforts undertaken by the person on behalf of the foreign power constitute sabotage, international terrorism, or clandestine intelligence activities.

Similar findings of probable cause are required for each element necessary to establish that a U.S. citizen is conspiring with or aiding and abetting someone engaged in sabotage, international terrorism, or clandestine intelligence activities.

The proviso in paragraph (3)(A) states that no U.S. person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States. This provision is intended to reinforce the intent of the Congress that lawful political activities should never be the sole basis for a finding of probable cause to believe that a U.S. person is a foreign power or an agent of a foreign power. For example, the advocacy of violence falling short of incitement is protected by the first amendment, under the Supreme Court's decision in BRANDENBURG v. OHIO, 395 U.S. 444 (1969). Therefore, the pure advocacy of the commission of terrorist acts would not, in and of itself, be sufficient to establish probable cause that an individual or group is preparing for the commission of such acts. However, one cannot cloak himself in first amendment immunity by advocacy where he is engaged in clandestine intelligence activities, terrorism, or sabotage.

Paragraph (3) (B) and (C) require the judge to find probable cause to believe that the premises or property to be searched are owned, used, possessed, by or in transit to or from a foreign power or an agent of a foreign power and that physical search of such premises or property can reasonably be expected to yield foreign intelligence information which cannot reasonably be obtained by normal investigative means.

Paragraph (4) requires the judge to find that the procedures described in the application to minimize the acquisition and retention, and prohibit dissemination, of certain information relating to U.S. persons fit the definition of minimization procedures in this title. The Congress contemplates that the court would give these procedures most careful consideration. If it is not of the opinion that they will be effective, the procedures should be modified.

Paragraph (5) requires that the judge find that the application contains the statements required by section 402. If the statements do not conform to the requirements of section 402, they can and must be rejected by the court.

Subsection (b) specifies what the order approving the physical search must contain. Paragraph (1) requires that it must specify the Federal officer or officers authorized to conduct the physical search and the identity, if known, or a description of the target of the physical search. It must also specify the premises or property to be searched and the information, material or property to be seized, altered, or reproduced, as well as the type of foreign intelligence information sought to be acquired. The order must include a statement of the manner in which the search is to be conducted and, whenever more than one physical search is authorized under the order, the authorized scope of each search and what minimization procedures shall apply to the information acquired by each search. These requirements are designed in light of the Fourth Amendment's requirements that warrants describe with particularity and specificity the person, place, and objects to be searched and seized.

Paragraph (2) of subsection (b) details what the court directs in the order. The order shall direct that minimization procedures will be followed. The order may also direct that a landlord, custodian, or other specified person furnish information, facilities or assistance necessary to accomplish the search successfully and in secrecy and with a minimum of interference to the services provided by such person to the target of the search. If this is done, the court shall direct that the person rendering the assistance maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the search or the aid furnished that such person wishes to retain. The order presented to the person rendering assistance need not be the entire order approved by the judge under this title. Rather only that portion of the order described in section 403(b)(2) (B)-(C), signed by the judge need be given to the specified person. This portion of the order should specify the person directed to give assistance, the nature of the assistance required, and the period of time during which such assistance is authorized.

Paragraph (2)(C) requires that the order direct that the physical search be undertaken within 30 days of the date of the order, or, if the physical search is of the property, information or material of a foreign power as defined in section 101(a) (1), (2), or (3) of FISA, that such search be undertaken within one year of the order. The comparable periods in FISA are 90 days for most targets and one year for "official" foreign powers.

Paragraph (2)(D) requires that the order direct that the federal officer conducting the physical search promptly report to the court the circumstances and results of the physical search. This report may be made to a judge other than the judge who granted the order approving the search.

Subsection 403(c) provides that at any time after a physical search has been carried out, the judge to whom the return has been made may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated. This provision is not intended to require that the judge assess such compliance, nor is it intended to limit such assessments to any particular intervals. However, it is useful to spell out the judge's authority explicitly so that there will be no doubt when a judge may review the manner in which information about U.S. persons is being handled.

Subsection 403(d) provides that applications made and orders granted under this title shall be retained for a period of at least ten years from the date of the application.

This is identical to the FISA requirements, and the purpose is to assure accountability.

Subsection 403 (e) and (f) establish a special notice procedure for those rare cases where a physical search of the residence of a United States person is conducted under this title. This provision reflects the court opinions which describe the search of the home as being at the "core" of the fourth amendment. In PAYTON v. NEW YORK, 445 U.S. 573 (1980), the Supreme Court declared:

"The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms: 'The right of the people to be secure in their . . . houses . . . shall not be violated.' That language unequivocally establishes the proposition that '[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" Id. at 589–90 (quoting SILVERMAN v. UNITED STATES, 365 U.S. 505, 511 (1961)).

Special protection for homes is also consistent with other legislation which imposes criminal penalties for searches of private dwellings. (See 18 U.S.C. 2236).

Subsection (e) provides that not more than 60 days after a physical search of the residence of a United States person authorized by this title, or such a search in the "exigent circumstances" described in section 406(b), has been conducted, the Attorney General shall provide the United States person with an inventory which shall include (1) the existence or not of a court order authorizing the physical search and the date of the order; (2) the date of the physical search and an identification of the premises or property searched; and

(3) a list of any information, material, or property seized, altered, or reproduced. Subsection (f) provides that on an ex parte showing of good cause by the Attorney General to a judge of the Foreign Intelligence Surveillance Court the provision of the inventory required by subsection (e) may be postponed for a period not to exceed 90 days. At the end of such period the provision of the inventory may, upon a similar showing, be postponed indefinitely. The denial of a request for such postponement may be reviewed as provided in section 401.

The Congress anticipates that searches of the residence of U.S. persons under this title will be infrequent. The "good cause" which may be grounds for postponement of notice is intended to include national security and practical considerations. Notice may harm national security by, for example, exposing an important ongoing espionage or international terrorism investigation. An illustration of practical grounds for postponement of notice would be a situation where the target was a permanent resident alien who returned after the search to his country of origin. It should be noted than the procedures for use of information under section 404, below, also require notice to any target against whom information acquired by a physical search under this title is to be used in legal proceedings.

USE OF INFORMATION

Section 404 places additional constraints on Government use of information obtained from physical search under this title and establishes detailed procedures under which information may be received in evidence, suppressed, or discovered. With respect to the use of information in legal proceedings, notice should be given to the aggrieved person as soon as possible, so as to allow for the disposition of any motions concerning evidence derived from physical search. In addition, the Attorney General should at all times be able to assess whether and to what extent the use of information made available by the Government to a State or local authority will be used.

Subsection (a) requires that information concerning U.S. persons acquired from physical search pursuant to this title may be used and disclosed by Federal officers and employees, without the consent of the U.S. person, only in accordance with the minimization procedures defined in section 409(c). This provision ensures that the use of such information is carefully restricted to actual foreign intelligence or law enforcement purposes. No information (whether or not it concerns a U.S. person) acquired from a physical search pursuant to this title may be used or disclosed except for lawful purposes. This is to ensure that information concerning foreign visitors and other non-U.S. persons, the use of which is not restricted to foreign intelligence or law enforcement purposes, is not used for illegal purposes.

There is no specific restriction in this title regarding to whom Federal officers may disclose information concerning U.S. persons acquired pursuant to this title although specific minimization procedures might require specific restrictions in particular cases. First, the Congress believes that dissemination should be permitted to State and local law enforcement officials. If Federal agents conducting a physical search authorized under this title were to acquire information relating to a violation of State criminal law, such as homicide, the agents could hardly be expected to conceal such information from the appropriate local officials. There will be an appropriate weighing of criminal law enforcement needs against possible harm to national security from the disclosure. Second, the Congress can conceive of situations where disclosure should be made outside of Government channels. For example, Federal agents may learn of a terrorist plot to kidnap a business executive. Certainly in such cases they should be permitted to disclose such information to the executive and his company in order to provide for the executive's security.

Finally, the Congress believes that foreign intelligence information relating to crimes, espionage activities, or the acts and intentions of foreign powers may, in some circumstances, be appropriately disseminated to cooperating intelligence services of other nations. So long as all the procedures of this title are followed by the Federal officers, including minimization and the limitations on dissemination, this cooperative relationship should not be terminated by a blanket prohibition on dissemination to foreign intelligence services. The Congress wishes to stress, however, that any such dissemination be reviewed carefully to ensure that there is a sufficient reason why disclosure of information to foreign intelligence services is in the interests of the United States.

Disclosure, in compelling circumstances, to local officials for the purpose of enforcing the criminal law, to the targets of clandestine intelligence activity or planned violence, and to foreign intelligence services under the circumstances described above are generally the only exceptions to the rule that dissemination should be limited to Federal officials.

Subsection (b) requires that any disclosure of information for law enforcement purposes must be accompanied by a statement that such evidence, or any information derived therefrom, may be used in a criminal proceeding only with the advance authorization of the Attorney General. This provision is designed to eliminate circumstances in which a local prosecutor has no knowledge that evidence was obtained through a foreign intelligence search. In granting approval of the use of evidence the Attorney General would alert the prosecutor to the search and he, in turn, could alert the court in accordance with subsection (c) or (d).

Subsections (c) through (i) set forth the procedures under which information acquired by means of physical search under this title may be received in evidence or otherwise used or disclosed in any trial, hearing or other Federal or State proceeding. Although the primary purpose of physical search conducted pursuant to this title is not likely to be the gathering of criminal evidence, it is contemplated that such evidence will be acquired and these subsections establish the procedural mechanisms by which such information may be used in formal proceedings. Notice should be given to the aggrieved person as soon as possible, so as to allow for the disposition of any motions concerning evidence derived from physical search under this title.

At the outset the Congress recognizes that nothing in these subsections abrogates the rights afforded a criminal defendant under BRADY v. MARYLAND, 373 U.S. 83 (1963), and the Jencks Act, 18 United States Code, Section 3500 ET SEQ. These legal principles inhere in any such proceedings and are wholly consistent with the procedures detailed here. Furthermore, nothing contained in this section is intended to alter the traditional principle that the Government cannot use material at trial against a criminal defendant, and then withhold from him such material at trial. UNITED STATES v. ANDOLSCHEK, 142 F. 2d 503 (2nd. Cir. 1944).

Subsection (c) states that whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from a physical search of the premises or property of that aggrieved person pursuant to the authority of this title, the United States shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information. This provision applies to information acquired from a physical search under this title or any fruits thereof.

Subsection (d) places the same requirements upon the States and their political subdivisions, and also requires notice to the Attorney General. The Attorney General should at all times be able to assess whether and to what extent the use of information made available by the Government to a State or local authority may be used.

Subsection (e) provides a separate statutory vehicle by which an aggrieved person against whom evidence derived or obtained from a physical search under this title is to be or has been introduced or otherwise used or disclosed in any trial, hearing or proceeding may move to suppress the information acquired by physical search or evidence de-

rived therefrom. The grounds for such motion would be that (1) the information was unlawfully acquired, or (2) the search was not made in conformity with the order of authorization or approval. A motion under this subsection must be made before the trial, hearing, or proceeding unless there was no opportunity to make such a motion or the movant was not aware of the grounds for the motion. It should be noted that the term "aggrieved person," as defined in section 409(d) does not include those who are mentioned in documents obtained or copied in a physical search.

Subsection (f) states in detail the procedure the court shall follow when it receives a notification under subsection (c) or (d) or a suppression motion is fined under subsection (e). This procedure applies, for example, whenever an individual makes a motion pursuant to subsection (d) or any other statute or rule of the United States to discover, obtain or suppress evidence or information obtained or derived from physical search conducted pursuant to this title (for example, Rule 12 of the Federal Rules of Criminal Procedure). Although a number of different procedures might be used to attack the legality of the search, it is this procedure "notwithstanding any other law" that must be used to resolve the question. The procedures set out in subsection (f) apply whatever the underlying rule or statute referred to in the motion. This is necessary to prevent the carefully drawn procedures in subsection (f) from being bypassed by the inventive litigant using a new statute, rule or judicial construction.

The special procedures in subsection (f) cannot be invoked until they are triggered by a Government affidavit that disclosure of an adversary hearing would harm the national security of the United States. If no such assertion is made, it is envisioned that mandatory disclosure of the application and order, and discretionary disclosure of other surveillance materials, would be available to the defendant. When the procedure is so triggered, however, the Government must make available to the court a copy of the court order and accompanying application upon which the physical search was based.

The court must then conduct an ex parte, in camera inspection of these materials as well as any other documents relating to the search which the Government may be ordered to provide, to determine whether the physical search of the aggrieved person was lawfully authorized and conducted. The subsection further provides that in making such a determination, the court may order disclosed to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the physical search only where such disclosure is necessary to make an accurate determination of the legality of the physical search.

The procedures set forth in subsection (f) are intended to strike a reasonable balance between an entirely in camera proceeding which might adversely affect the defendant's ability to defend himself, and mandatory disclosure, which might occasionally result in the revelation of sensitive foreign intelligence information. The decision whether it is necessary to order disclosure to a person is for the Court to make after reviewing the underlying documentation and determining its volume, scope, and complexity. Note the discussion of these matters in UNITED STATES v. BUTENKO, SUPRA. There, the Court of Appeals, faced with the difficult problem of determining what standard to follow in balancing national security interests with the right to a fair trial, stated with respect to electronic surveillance:

"The distinguished district court judge reviewed in camera the records of the wiretaps at issue here before holding the surveillance to be legal. . . . Since the question confronting the district court as to the second set of interceptions was the legality of the taps, not the existence of tainted evidence, it was within his discretion to grant or to deny Ivanov's request for disclosure and a hearing. The exercise of this discretion is to be guided by an evaluation of the complexity of the factors to be considered by the court and by the likelihood that adversary presentation would substantially promote a more accurate decision." (494 F. 2d at 607.)

Thus, in some cases, the Court will likely be able to determine the legality of the search without any disclosure to the defendant. In other cases, however, the question may be more complex because of, for example, indications of possible misrepresentation of fact, vague identification of the persons to be targeted or search records which include a significant amount of non-foreign intelligence information, calling into question compliance with the minimization standards contained in the order. In such cases, it is contemplated that the court will likely decide to order disclosure to the defendant, in whole or in part, since such disclosure "is necessary to make an accurate determination of the legality of the physical search."

Cases may arise, of course, where the Court believes that disclosure is necessary to make an accurate determination of legality, but the Government argues that to do so, even given the Court's broad discretionary power to excise certain sensitive portions, would damage the national security. In such situations the Government must choose—either disclose the material or forgo the use of the search-based evidence. Indeed, if the Government objects to the disclosure, thus preventing a proper adjudication of legality, the prosecution would probably have to be dismissed.

Subsection (g) states that if the United States district court pursuant to subsection (f) determines that the physical search was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the physical search of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the physical search was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

The general phrase "in accordance with the requirements of law" has been chosen to deal with the problem of what procedures are to be followed in those cases where the trial court determines that the surveillance was unlawfully authorized or conducted. The evidence obtained would not, of course, be admissible during the trial. But beyond this, in the case of an illegal surveillance, the Government is constitutionally mandated to surrender to the defendant all the records of the surveillance in its possession in order for the defendant to make an intelligent motion on the question of taint. The Supreme Court in ALDERMAN v. UNITED STATES, 394 U.S. 165 (1968) held that, once a defendant claiming evidence against him was the fruit of unconstitutional electronic surveillance has established the illegality of such surveillance (and his "standing" to object), he must be given confidential materials in the Government's files to assist him in establishing the existence of "taint." The Court rejected the Government's contention that the trial court could be permitted to screen the files in camera and give the defendant only material which was "arguably relevant" to his claim, saying such screening would be sufficiently subject to error to interfere with the effectiveness of adversary litigation of the question of "taint." The Supreme Court refused to reconsider the ALDERMAN rule and, in fact reasserted its validity in its KEITH decision. (UNITED STATES v. ALDERMAN, supra, at 393.)

When the court determines that the surveillance was lawfully authorized and conducted, it would, of course, deny any motion to suppress. In addition, once a judicial determination is made that the surveillance was lawful, a motion for discovery of evidence must be denied unless disclosure or discovery is required by due process.

Subsection (h) states that orders granting motions or requests under subsection (g), decisions under this section that a physical search was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders or other materials relating to the physical search shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court. It is intended that all orders regarding legality and disclosure shall be final and binding only where the rulings are against the Government.

Subsection (i) states that the provisions of this section regarding the use or disclosure of information obtained or derived from a search shall apply to information obtained or derived from a search conducted without a court order to obtain foreign intelligence information which is not a physical search as defined in this title solely because the existence of exigent circumstances would not require a warrant for law enforcement purposes. As discussed with respect to section 406(b), below, a search may be conducted without a court order to obtain foreign intelligence information in exigent circumstances. This subsection makes clear that the use or disclosure of information obtained or derived from such a search must be governed by the provisions of this section.

OVERSIGHT

Section 405(a) provides that on a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all physical searches conducted pursuant to this title, and all other searches, except those reported under section 108 of FISA relating to electronic surveillance, conducted in the United States for foreign intelligence purposes. The reference to "all other searches" is intended to include those searches which would require a judicial warrant for law enforcement purposes absent exigent circumstances. Also included are any other searches which may not fall within the definitions of "physical search" and "electronic surveillance" under this Act, but which may be conducted in the United States to collect foreign intelligence information.

In addition, on an annual basis the Attorney General shall provide to those committees a report setting forth with respect to the preceding calendar year (a) the total number of applications made for orders approving physical searches under this title;

and (b) the total number of such orders either granted, modified, or denied. The comparable provision of FISA requires a public report to the Administrative Office of the United States Courts. The reports concerning physical searches are to be submitted to the committees, and may be classified, because the Justice Department has advised that the numbers may be so few as to reveal sensitive information concerning U.S. foreign counterintelligence activities.

Subsection (b) of section 405 provides that whenever a search is conducted without a court order to obtain foreign intelligence information which is not a physical search as defined in this title solely because the existence of exigent circumstances would not require a warrant for law enforcement purposes, a full report of such search, including a description of the exigent circumstances, shall be maintained by the Attorney General. Each such report shall be transmitted to the Foreign Intelligence Surveillance Court promptly after the search is conducted.

The term "exigent circumstances" means circumstances in which it is impossible, for practical reasons, to apply for a court order authorizing the search before the opportunity to conduct the search would be lost due to the delay. As discussed below with respect to section 406(b), such searches may be conducted only pursuant to regulations issued by the Attorney General and reported to the intelligence committees. The exigent circumstances that may justify a search without a court order must relate solely to the time required to apply for a court order. Whenever the circumstances allow time to apply for a court order, such an order must be obtained. If a search is approved without a court order due to exigent circumstances and then is postponed, the process of application for a court order must begin at once and every reasonable effort must be made to apply for an order. If the opportunity for the search reappears before the application is submitted, the search may be conducted only if that opportunity is so limited in duration and so unlikely to recur that further delay to obtain the court order would preclude the search.

An example is the search of a package entrusted to a courier in an espionage network. The courier may receive the package without warning and be instructed to deliver it with a tight deadline. If the courier is a U.S. intelligence source, the package may be accessible to Federal officers for a brief time, and Federal officers may have no advance knowledge that the courier will receive the package. If all the conditions that would justify a court order are met, the search may be approved. If the courier is unable to make the package available at the expected time and the search is postponed with the possibility of a later opportunity, the process of application for an order must begin as soon as possible so that every reasonable effort is made to obtain a court order prior to the next opportunity for a search. If more than one search is contemplated, the application process should also begin as soon as possible and every reasonable effort must be made to obtain a court order prior to the next search or searches.

AUTHORITY FOR INTELLIGENCE SEARCHES

Section 406(a) provides that the procedures contained in this title shall be the exclusive means by which a physical search, as defined in this title, may be conducted in the United States for foreign intelligence purposes, and an order issued under this title authorizing a physical search shall constitute a search warrant authorized by law for purposes of any law.

The intent of the "exclusive means" provision is the same as the comparable FISA provision, as reflected in the statement of managers accompanying the Conference Report on FISA. The establishment by this title of exclusive means by which the President may conduct physical searches within the United States to collect foreign intelligence information does not foreclose a different decision by the Supreme Court. The intent is to apply the standard set forth in Justice Jackson's concurring opinion in the Steel Seizure Case: "When a President takes measures incompatible with the express or implied will of Congress, his power is at the lowest ebb, for then he can rely only upon his own Constitutional power minus any Constitutional power of Congress over the matter." YOUNGSTOWN SHEET & TUBE CO. v. SAWYER, 343 U.S. 579, 673 (1952).

Subsection (a) of section 406 also provides that an order issued under this title authorizing a physical search shall constitute a search warrant authorized by law for purposes of any other law. For example, a federal statute makes it a crime for a federal law enforcement officer to search a private dwelling without a judicial warrant, except incident to an arrest or with the consent of the occupant. 18 United States Code, Section 2236. While a Justice Department opinion has concluded that this statute does not bar "properly authorized warrantless physical searches for national security purposes," the opinion states that "the issue is not free from doubt." See S. Rept. 98-660, p. 18. This provision resolves that issue by making clear that a court order under this title meets the statutory warrant requirement for dwelling searches. Similar federal statutes prohibit the opening of mail in United States postal channels without a judicial warrant. See 18 United States Code, Sections 1701-1702, 1703(b) and 39 United States Code, Section 3623(d). This title is not intended to modify or supersede those federal statutes which authorize FBI access without a warrant to financial or telephone records or similar information in foreign counterintelligence investigations.

Subsection (b) of section 406 provides that searches conducted in the United States to collect foreign intelligence information, other than physical searches as defined in this title and electronic surveillance as defined in FISA, and physical searches conducted in the United States without a court order to collect foreign intelligence information, may be conducted only pursuant to regulations issued by the Attorney General. This provision is intended to apply primarily to two types of activity—first, searches conducted in exigent circumstances without a warrant which, absent exigent circumstances, would require a warrant for law enforcement purposes; and second, physical searches of the premises of "official" foreign powers which do not come within the jurisdiction of the Court under section 401(a) of this title. This provision also would apply to any other searches which may not fall within the definitions of "physical search" and "electronic surveillance" in this Act, but which may be conducted in the United States to collect foreign intelligence information.

The regulations issued by the Attorney General for these activities, and any changes to those regulations, are to be provided to the intelligence committees at least 14 days prior to taking effect. Any regulations issued by the Attorney General regarding such activities which were in effect as of January 1, 1994, shall be deemed to be regulations required by this subsection.

PENALTIES

Section 407(a)(1) makes it a criminal offense for officers or employees of the United States to intentionally engage in physical search within the United States under color of law for the purpose of obtaining foreign intelligence information except as authorized by statute. Section 407(a)(2) makes it a criminal offense for officers or employees of the United States to intentionally disclose or use information obtained under color of law by physical search, knowing or having reason to know that the information was obtained through physical search not authorized by statute and conducted in the United States for the purpose of obtaining foreign intelligence information. Section 407(b) provides an affirmative defense to a law enforcement or investigative officer who engages in such an activity for law enforcement purposes in the course of his official duties, and the physical search was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction. The penalty is a fine of not more than $10,000 or imprisonment for not more than five years, or both. Section 407(d) makes clear that there is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States when the offense was committed.

One of the important purposes of this title is to afford security to intelligence personnel so that if they act in accordance with the statute, they will be insulated from liability; it is not to afford them immunity when they intentionally violate the law. The word "intentionally" was carefully chosen. It is intended to reflect the most strict standard for criminal culpability. The Government would have to prove beyond a reasonable doubt both that the conduct engaged in was in fact a violation, and that it was engaged in with a conscious objective or desire to commit a violation.

CIVIL LIABILITY

Section 408 imposes civil liability for violations of section 407, and authorizes an "aggrieved person," as defined in section 409(d), to recover actual damages, punitive damages, and reasonable attorney's fees and other investigative and litigation costs reasonably incurred. Since the civil cause of action only arises in connection with a violation of the criminal provision, the statutory defense does not have to be restated. Although included in the definition of "aggrieved person," foreign powers and non-U.S. persons who act in the United States as officers or employees of foreign powers or as members of international terrorist groups would be prohibited from bringing actions under section 407. Other foreign visitors, including those covered by section 101(b)(1)(B) of the definition of "agent of a foreign power," would have a cause of action under this provision. Those barred from the civil remedy will be primarily those persons who are themselves immune from criminal or civil liability because of their diplomatic status.

DEFINITIONS

Section 409(a) provides that the terms "foreign power," "agent of a foreign power," "international terrorism," "sabotage," "foreign intelligence information," "Attorney General," "United States person," "United States," "person," and "State" shall have the same meaning as in Section 101 of the

Foreign Intelligence Surveillance Act of 1978 (FISA). The legislative history of these FISA definitions is applied to physical search below. Because many of the substantive aspects of this title derive from the FISA definitions of particular terms, this subsection is critical to understanding this title as a whole.

FOREIGN POWER

The definition of "foreign power" in section 101(a) of FISA reads as follows:

(a) "Foreign power" means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

"Foreign power" is defined in section 101(a) of FISA in six separate ways. These definitions are crucial because physical searches may only be targeted against foreign powers or agents of foreign powers.

It is expected that certain of the defined "foreign powers" will be found in the United States and targeted directly; others are not likely to be found in the United States but are included in the definition more to enable certain persons who are their agents, and who may be in the United States, to be targeted as "agents of a foreign power," as defined. As will appear below, the six categories may well overlap, and an entity may well be found to a "foreign power" under more than one category. This is not improper. These categories are intended to be all-encompassing, and clear lines cannot always be drawn between different descriptions of the types of entities which justify targeting physical search. The six categories are:

(1) "A foreign government or any component thereof, whether or not recognized by the United States." This category would include foreign embassies and consulates and similar "official" foreign government establishments that are located in the United States.

(2) "A faction of a foreign nation or nations, not substantially composed of United States persons." This category is intended to include factions of a foreign nation or nations which are in a contest for power over, or control of the territory of, a foreign nation or nations. An example of such a faction might be the PLO, the Eritrean Liberation Front, or similar organizations. Specifically excluded from this category is any faction of a foreign nation or nations which is substantially composed of permanent resident aliens or citizens of the United States. The word "substantially" means a significant proportion, but it may be less than a majority.

(3) "An entity, which is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments." This category is specifically delineated in order to treat entities of this type in the same manner as the government they serve by including them within those "official" foreign powers whose premises may be subject to a physical search without a court order. Only entities "openly acknowledged" by a foreign government to be both directed and controlled by it are subject to this provision.

Those entities which are clearly arms of a government or governments meet this definition. This category would include, for example, a legitimate commercial establishment which is directed and controlled by a foreign government. Such a legitimate commercial establishment might be a foreign government's airline, even though it was incorporated in the United States. Also included in this definition would be international organizations of states such as the Organization of Petroleum Exporting Countries or the Organization for African Unity. Where such organizations are involved, it is not necessary to show that one or two countries control the organization. Rather, it is sufficient to show that the organization is made up of governmental entities which collectively direct and control the organization.

It is recognized that this type of foreign power includes corporations or organizations present in the United States which may have many United States citizens as employees or even officers. Nevertheless, this fact does not detract from the fact that the organization acts as an arm of a foreign government or governments and as such may engage in activities directly affecting our national interests or security. In such circumstances a physical search targeted against such an entity should focus on the premises, property, information, or material of the organization, not of its employees or members who are United States citizens. A search of the premises, property, information, or material of an individual employee could be justified only by obtaining a separate court order for the individual target.

A law firm, public relations firm, or other legitimate concern that merely represents a foreign government or its interests does not mean it is an entity in this category. The question whether a group, commercial enterprise, or organization comes within the scope of this definition is one for the court to answer on the basis of a probable cause standard.

(4) "A group engaged in international terrorism or activities in preparation therefor." The term "international terrorism" is a defined term, see below, and includes within it a criminal standard. A group under this category must be engaged in "international terrorism," as defined, or be in preparation therefor. Such groups would include Black September, the Red Army Faction, the Red Brigades, and the Japanese Red Army. It would not include groups engaged in terrorism of a purely domestic nature. The citizenship of the terrorist group or its members while relevant to the determination of whether it is a "foreign power," is not determinative. It is not required that the group be "foreign-based," because in the world of international terrorism a group often does not have a particular "base," or if it does, it may be impossible to determine. Perhaps more importantly, where its base is located is often irrelevant to the foreign intelligence interest or concern with respect to the group. There have been domestically based international terrorist groups, which have engaged in acts overseas which have resulted in deaths. The group must be engaged in criminal terrorist activities, which are international in scope or manner of execution. See the discussion of "international terrorism," below.

Generally, such groups will not be targeted in the United States as "foreign powers," if only because such a group is not likely to maintain an official presence here. Rather, members of the group may be in the United States either singly or in bunches, and they will be targeted as "agents of a foreign power," to wit, agents of a group engaged in international terrorism.

(5) "A foreign-based political organization, not substantially composed of United States persons." This category would include foreign political parties. In some countries, both totalitarian and parliamentary, ruling parties effectively control the government. Thus, information concerning the activities and intentions of these parties can directly relate to the activities and intentions of their government. Moreover, the intentions and positions of minority parties can also be of great importance to this nation, because, although minorities, they may affect the course of their government or they may come to power, in which case it would be important to have prior knowledge of their positions and intentions. Finally, this category is not limited to political parties; there are other foreign political organizations which exercise or have potential political power in a foreign country or internationally. Because it can be important to this nation to have intelligence concerning any organization which exercises or has potential political power in a foreign country or internationally targeting such organizations can be proper. On the other hand, where a political organization is domestically based or is substantially composed of U.S. persons and does not otherwise fall within the other definitions of "foreign power" or "agent of a foreign power," the gathering of political information concerning that organization by physical search—even though desired or even important to this Government—is improper and raises grave First Amendment questions. This definition clearly does not include organizations comprised of Americans of Greek, Irish, Jewish, Chinese, or other extractions who have joined together out of interest or concern for the country of their ethnic origin.

(6) An entity, which is directed and controlled by a foreign government or "governments." This category is similar to category (3) above, except that the entity need not be openly acknowledged to be directed and controlled by a foreign government or governments. Such an entity must be acting as an arm of the government with respect to activities that are of foreign intelligence or counterintelligence significance. An example would be an entity which appears to be a legitimate commercial establishment, but which is being utilized by a foreign government as a cover for espionage activities. The concerns set forth with respect to openly controlled entities apply to this category as well. There is the added danger that targeting of a covertly controlled entity, substantially composed of U.S. persons, would potentially offer a means for evading the requirements for targeting of individual U.S. persons. Therefore, it is important to emphasize that the judge must find probable cause the entity is both "directed" and "controlled" by a foreign government or governments. Merely following the directions of a foreign government which wants a group to lobby or speak out publicly on behalf of the government's interests, is not in itself sufficient to place the group in this category. While direction and control are separate elements to be established, the same evidence can demonstrate both.

Again, a law firm, public relations firm, etc. that merely represents a foreign government or its interests does not mean it is an

entity in this category. The entity which sees its own interests as parallel to those of a foreign government and acts accordingly is not by this directed and controlled by that government. It is only when the foreign government or its agents influence the entity to the extent that the entity yields its independent judgments that an entity become directed and controlled by a foreign government. In particular cases, obviously, it may be difficult to discern the actual direction and control, and, of course, circumstantial evidence may suffice in establishing probable cause, but no entity which purports to be a U.S. person should be considered directed and controlled by a foreign government solely on the basis that its activities are consistent with the desires of a foreign government.

"AGENT OF A FOREIGN POWER"

The term "agent of a foreign power" is defined in section 101(b) of FISA as follows:

(b) "Agent of a foreign power" means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4);

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(1) Non-Resident Aliens in the United States.—There are two separate categories of the definition of "agent of a foreign power" in section 101(b) of FISA. The first cannot be applied to United States citizens and permanent resident aliens; it is, therefore, limited to aliens in the United States who are tourists, visiting businessmen, exchange visitors, foreign seamen, diplomatic and consular personnel, illegal aliens, etc.

Most of the persons in this category are protected by the fourth amendment when they are in the United States. By requiring a judicial warrant on the basis of statutory criteria, such persons' fourth amendment protections would be increased from their status under current operating procedures of the executive branch. On the other hand, the protections afforded such persons are not as great as those afforded United States persons. The standard for targeting nonresident aliens does not have a criminal standard; and there is no requirement to minimize the acquisition, retention, and dissemination of information with respect to such persons. The Congress is convinced that the protections afforded nonresident aliens in this title fully satisfy the Constitution.

The basic test under the fourth amendment is that a search be reasonable. Reasonableness itself is determined by weighing the Government's legitimate need for the information sought against the invasion of privacy the search entails.

The findings of probable cause required to be made by the judge as to nonresident aliens directly relate to the likelihood of obtaining foreign intelligence from physical search of their premises, property, information, or material. Such information must by definition directly and substantially relate to important foreign policy or national security concerns, and the Attorney General must find that the purpose of the search is to obtain such information.

As to the "equal protection" question, the Congress notes that the Supreme Court has held that where there are compelling considerations of national security, alienage distinctions are constitutional. See e.g., HAMPTON v. MOW SUN WONG, 426 U.S. 88, 116 (1976). Those distinctions must, however, be reasonable in light of the demonstrated need and not be overly broad. With respect to those non-resident aliens who fit within the two categories of agents of foreign powers in section 101(b)(1) of FISA, that need was demonstrated during the congressional consideration of FISA. It should be noted that, in light of the particular requirements for physical search as compared to electronic surveillance, there are fewer procedural differences between U.S. persons and non-resident aliens under this title than under FISA.

Subsection (b)(1)(A) includes in its definition of "agent of a foreign power" those persons, who are not U.S. persons, who act in the United States as officers or employees of a foreign power, or as members of a foreign power as defined in subsection (a)(4), i.e., groups engaged in international terrorist activities or activities in preparation therefor.

Non-resident aliens who act in the United States as officers or employees of a foreign power are likely sources of foreign intelligence or counterintelligence information. The definition excludes persons who serve as officers or employers of a foreign power in their home country, but do not act in that capacity in the United States. The reference to employees of a foreign power is meant to include those persons who have a normal employee-employer relationship. It is not intended to encompass such foreign visitors as professors, lecturers, exchange students, performer or athletes, even if they are receiving remuneration or expenses from their home government in such capacity.

Groups engaged in international terrorism would not likely have "officers" or "employees." A member of an international terrorist group will most likely not identify himself as such upon entering the United States, as would an officer or employee of a foreign power. In the latter instance, a copy of the person's visa application will usually suffice to show that he is acting in the United States as an officer or employee of a foreign power. However, in the case of a member of an international terrorist group, the government will most likely have to rely on more circumstantial evidence, such as concealment of one's true identity or affiliation with the group, or other facts and circumstances indicating that such person is in the United States for the purpose of furthering terrorist activities. The term "member" means an active, knowing member of the group or organization which is engaged in international terrorism or activities in preparation therefor. It does not include mere sympathizers, fellow-travelers, or persons who may have merely attended members of the group. On the other hand, if a person has received terrorist training from such a group, this would be substantial evidence that he was a member of the group.

Subsection (b)(1)(B) defines an "agent of a foreign power" as a person who is not a U.S. person and who acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities.

This provision reflects two concerns. The first is the counterintelligence interest in certain foreign visitors as to whom it could be shown with a high degree of probability that they would engage in clandestine intelligence activities, but before sufficient information can be established showing that they are so engaged. As a practical matter, less intrusive techniques may not enable the Government to obtain sufficient information about persons visiting the United States for only a limited time and who do not have a history of activities in the United States to show that they are indeed engaged in clandestine intelligence activities. A second concern, however, is that this non-criminal standard should not be used as a basis for targeting foreign visitors from any nation, but should be limited to foreign visitors acting on behalf of certain foreign powers as to which it could be shown systematically engaged in clandestine intelligence activities threatening the security of the United States.

In light of these two legitimate concerns, this provision does not require a showing that the individual foreign visitor is himself currently engaged in clandestine intelligence activities, but rather that the circumstances of his presence here indicate that he may engage in such activities which are contrary to this nation's interests. In addition, it must be shown that he is acting for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States which are contrary to the interests of the United States. It is intended that the Government show that the foreign power has demonstrated some pattern or practice of engaging in clandestine intelligence activities in the United States contrary to the interests of the United States.

The phrase, "acts for or on behalf of a foreign power," is here intended to require the Government to show a nexus between the individual and the foreign power that suggests that the person is likely to do the bidding of a foreign power. For example, visitors from totalitarian countries present in the United States under the auspices, sponsorship, or direction of their government would satisfy this standard.

The term "interests" refers to important concerns or long-term goals of the United States, including interests embodied in law. It might be said that any country which engages in clandestine intelligence activities in the U.S. ipso facto acts contrary to this Nation's interests. This is clearly not intended here.

Once the requisite facts with regard to the foreign power are established, the question is whether the circumstances of the person's presence in the United States indicate that the person may engage in clandestine intelligence activities for that foreign power contrary to the interests of the United States. The answer to this question will vary according to what is known about the intelligence operations of the particular foreign power. Among the factors that might be taken into account are whether the foreign visitor engages in activities with respect to which there is evidence that other visitors who engage in similar activities are officers, agents, or acting on behalf of the intelligence service of that foreign power. If the Government can show from experience that a particular foreign power uses a certain class of visitors to this country for carrying out secret intelligence assignments, this too would indicate that a visitor in this class may engage in clandestine intelligence activities.

The standard "may engage in such activities" means that a physical search can be conducted to anticipate clandestine intelligence activities by such persons, rather than waiting until after they have taken place. The additional standards for aiding or abetting, and conspiracy, require probable cause that the foreign visitor is knowingly assisting persons who are already engaged in clandestine intelligence activities. The "knowingly" requirements are the same as in the aiding or abetting and conspiracy standards for U.S. persons, discussed regarding subsection (b)(2)(A) and (B) below.

This provision does not treat nationals of certain countries differently from others solely on the basis of their nationality. Instead, targeting of the nationals of other countries depends on the activities of the governments of those countries and whether the individual is acting on behalf of the foreign government. There must also be probable cause to believe that the physical search of the premises or property of the individual can reasonably be expected to yield foreign intelligence information which cannot reasonably be obtained by normal investigative means.

The term "clandestine intelligence activities" is intended to have the same meaning as in subsection (b)(2)(A) and (B), discussed below.

(2) "ANY PERSON"—The second part of the FISA definition of "agent of a foreign power" requires that whenever a United States person is to be the target of a physical search there must be a showing that his activities at least may involve a violation of law. As a matter of principle, no United States citizen in the United States should be targeted for a physical search by his government absent some showing that he at least may violate the laws of our society. A citizen in the United States should be able to know that his government cannot invade his privacy with the most intrusive techniques if he conducts himself lawfully.

On the other hand, the physical searches under this title are not primarily for the purpose of gathering evidence of a crime. They are to obtain foreign intelligence information, which when it concerns United States persons must be necessary to important national concerns. Combating espionage and covert actions of other nations in this country is an extremely important national concern. Prosecution is one way, but only one way and not always the best way, to combat such activities. "Doubling" an agent or feeding him false or useless information are other ways. Monitoring him to discover other spies, their tradecraft and equipment can be vitally useful. Prosecution, while disabling one known agent, may only mean that the foreign power replaces him with one whom it may take years to find or who may never be found.

(A) CLANDESTINE INTELLIGENCE GATHERING

Paragraph (2)(A) allows physical search of property of any person who is knowingly engaged in clandestine intelligence gathering activities, which activities involve or may involve a violation of the criminal statutes of the United States.

The first aspect of this definition is that the person is engaging in such acts "knowingly." This does not mean that he must know, or that the Government must show that he knows, that he may be violating a Federal criminal law. It does mean that he must known that he is engaging in clandestine intelligence gathering activities and that he knows that he is doing so on behalf of a foreign power. It is often difficult to prove what a person knows and what he does not know. The Congress intends that circumstantial evidence should be sufficient to show the requisite knowledge. If, for example, a person is transmitting classified defense secrets to the military attaché of a foreign embassy, this should be sufficient to show that he knows he is acting for or on behalf of a foreign power. Similarly, if a person has received training in or equipment for espionage, for example a microdot camera or disguised radio device, this too should be sufficient to show that he knows what he is doing. While this, and the other provisions under paragraph (2), are not intended to reach one who in fact is ignorant as to the nature of what he is doing, the knowing requirement is not intended to force the Government to disprove his ignorance when a person engaged in such activities would reasonably suspect that he was acting for or on behalf of a foreign power.

Next, the person must be "engaged" in the proscribed activities. Unlike the standard for foreign visitors, the fact that he "may engage" in these activities some time in the future is not sufficient. For example, if evidence shows that a person has recently engaged in the activities, this would normally suffice to show probable cause that he is "engaged" in such activities now.

On the other hand, evidence that a person engaged in the proscribed activities six months or longer ago might well, depending on the circumstances and other evidence, be sufficient to show probable cause that he is still engaged in the activities. For instance, evidence that a U.S. person was for years a spy for a power currently hostile to the United States, but who has dropped out of sight for a few years, would probably be sufficient to show "probable cause" that he was, having now reappeared, continuing to engage in the clandestine intelligence activities.

Probably the most critical term in this provision is "clandestine intelligence gathering activities." It is anticipated that most clandestine intelligence gathering activities will constitute a violation of the various criminal laws aimed at espionage, either directly or by failure to register, see e.g., 18 U.S. Sections 792–799, 951; 42 U.S.C. Sections 2272–2278b; and 50 U.S.C. Section 855. The term "clandestine intelligence gathering activities" is intended to have the same meaning as the word espionage in normal parlance, rather than as a legal term denoting a particular offense. The term also includes those activities directly supportive of espionage such as maintaining a "safehouse," servicing "letter drops," running an "accommodation address," laundering funds, recruiting new agents, infiltrating or exfiltrating agents under cover, creating false documents for an agent's "cover," or utilizing a radio to receive or transmit instructions or information by "burst transmission." "Clandestine intelligence gathering activities" are intended to be activities which no reasonable person would engage in without knowing that society would not condone it. As the words indicate, the activities must be "clandestine," that is, efforts have been taken to conceal the activities.

This does not necessarily mean that the information gathered by the agent must itself be secret or nonpublic, although that would usually be the case. It is possible that a spy may be tasked to obtain information which is technically available to the public, but which a foreign power would not like it known that it was seeking. If a spy, for instance, used false identification or a ruse to obtain the information and then delivered the information by means of a microdot hidden in a magazine left at a "dead drop," both the means by which he gathered and the means by which he transmitted the information would be "clandestine," even though the information itself might not be secret. It can be proper for the government to monitor such a person, even if the information he is collecting at that moment is not secret, because his activities identify him as a spy. On the one hand, having done his job successfully he may be given a new assignment to collect secret information. On the other hand, by monitoring his contacts in this enterprise, the Government can learn valuable information concerning the tactics, capabilities, and personnel of the foreign intelligence service.

Obviously, gathering classified defense information, information about intelligence sources and methods, and classified diplomatic information qualifies as clandestine intelligence gathering activities if it is done in a clandestine manner. In addition, the Congress is aware that foreign powers also target their intelligence apparatus against American technology and trade secrets, economic developments, political information, and even personal information for purposes of blackmail or coercion. The gathering of any such information may be within the term "clandestine intelligence gathering activities."

As noted above, "clandestine intelligence gathering activities" are intended to be conduct of the nature associated with spies and espionage in its generic sense, but the term is supposed to be flexible with respect to what is being gathered because the intelligence priorities and requirements differ between nations over time, and this title is intended to allow physical search in counterintelligence investigations of different foreign powers' intelligence activities well into the future.

It is possible, although unlikely, that certain groups of Americans might indeed come close to using espionage techniques for otherwise lawful purposes. Thus, the provisions require as a separate element of proof that the person be engaged in clandestine intelligence gathering activities "for or on behalf of a foreign power." This means that the Government will have to show probable cause to believe that the person is not only engaged in clandestine intelligence gathering activities, but also that those activities are for or on behalf of a foreign power. Thus, if all that can be shown is that a person is

stealing defense secrets and using a "dead drop" to pass them on, the Government will have to show more, that is, probable cause to believe that he is doing this for a foreign power.

Similarly, the fact that a person gathers information and transmits it for a foreign power by itself does not satisfy the standard of this definition. Americans for personal or commercial reasons may legitimately gather information for foreign powers, as indeed registered lobbyists often do, but their activity, if legitimate, does not utilize the tradecraft of espionage. (The Congress does not intend that "clandestine intelligence gathering activities" must necessarily include the use of espionage tradecraft, but its use is significant.) Thus, there seems little likelihood that a person would be engaged in clandestine intelligence gathering activities for or on behalf of a foreign power and not in fact be engaged in reprehensible conduct of substantial concern to this Nation's security.

As an added safeguard, however, the Government must also show that there is probable cause to believe that the person is engaged in activities that at least may violate the Federal criminal law. As noted above, it is expected that most persons under this definition would be likely to violate laws directed against espionage. In addition, there are other laws which might be violated, for example, 18 U.S.C. section 2514 which proscribes interstate transportation of stolen property; and 50 U.S.C. section 2021–2032, the Export Administration Act.

The words "may involve" as used in this subparagraph are not intended to encompass individuals whose activities clearly do not violate Federal law. They are intended to encompass individuals engaged in clandestine gathering activities which may, as an integral part of those activities, involve a violation of Federal law. They cover the situation where the Government cannot establish probable cause that the foreign agent's activities involve a specific criminal act, but where there are sufficient specific and articulable facts to indicate that a crime may be involved.

This "may involve" standard is necessary in order to permit the Government to investigate adequately in cases such as those where Federal agents have witnessed "meets" or "drops" between a foreign intelligence officer and a citizen who might have access to highly classified or similarly sensitive information; information is being passed, but the Federal agents have been unable to determine precisely what information is being transmitted. Such a lack of knowledge would of course disable the Government from establishing that a crime was involved or what specific crime was being committed. Nevertheless, the circumstances might be such as to indicate that the activity may involve a crime. The crime involved might be one of several violations depending, for example, upon the nature of the information being gathered.

In applying this standard, the judge is expected to take all known relevant circumstances into account—for example, who the person is, where he is employed, whether he has access to classified or other sensitive information, the nature of the clandestine meetings or other clandestine activity, the method of transmission, and whether there are any other likely innocent explanations for the behavior. It is intended, moreover, that the circumstances must not merely be suspicious, but must be of such a nature as to lead a reasonable man to conclude that there is probable cause to believe the activity may involve a Federal criminal violation.

The term "may involve" not only requires less information regarding the crime involved, but also permits a physical search at some point prior to the time when a crime sought to be prevented, as for example, the transfer of classified documents, actually occurs. There need not be a current or imminent violation if there is probable cause that criminal acts may be committed. However, upon an assertion by the Government that an informant has claimed that someone has been instructed by a foreign power to go into "deep cover" for several years before actually commencing espionage activities, such facts would not necessarily be encompassed by the phrase "may involve." A physical search cannot be justified unless there is probable cause to believe that the person is engaged in such activities, even though the relationship of those activities to a specific violation of law may be more uncertain or likely to occur in the future.

It should be made perfectly clear that a physical search would not be authorized under this, or any other definition of agent of a foreign power, against an American reporter merely because he gathers information for publication in a newspaper, even if the information was classified by the Government. Nor would it be authorized against a Government employee or former employee who reveals secrets to a reporter or in a book for the purpose of informing the American people. The definition would not authorize searches of the property of ethnic Americans who lawfully gather political information and perhaps even lawfully share it with the foreign government of their national origin. It obviously would not apply to lawful activities to lobby, influence, or inform Members of Congress or the administration to take certain positions with respect to foreign or domestic concerns. Nor would it apply to lawful gathering of information preparatory to such lawful activities.

In the case of an organization whose leaders are engaged in clandestine intelligence gathering activities, such activity cannot be attributed to every member of the group. There must be probable cause that a particular member is himself engaged in such activity before a search of his property may be authorized under this subparagraph.

In short, for a person to be an agent of a foreign power under this definition he must be knowingly engaged in clandestine intelligence gathering activities, like espionage, for or on behalf of a foreign power, and those activities must be such that they at least "may involve" a violation of Federal criminal law.

A particularly difficult problem may arise where a person is "turned" or "doubled;" that is, having started as an agent for a foreign power, he is persuaded instead to work for this Government. The standard under this paragraph requires that a person knowingly engage in activities for or on behalf of a foreign power. If the person is in fact working for this Government and not for the foreign power, this standard is obviously not met and his property could not be searched under this paragraph. Often, however, there may be substantial doubt whether he is acting under this Government's control or under the control of a foreign power. It may well be unclear which side is deceiving which. The Congress recognizes that the fact that a supposedly "doubled" agent indeed does carry out his assignments and instructions from this Government does not mean that he has stopped carrying out his assignments and instructions from the foreign power contrary to this Government's interest. It is the intent of Congress that, until such time as the "doubled" agent is trusted enough to seek his consent to a search, his property may be subject to an unconsented search on the basis of his acting for or on behalf of a foreign power.

(B) "OTHER CLANDESTINE INTELLIGENCE ACTIVITIES"

Paragraph (2)(B) defines agent of a foreign power as a person who pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States.

The term "any other clandestine intelligence activities" is intended to refer to covert actions by intelligence services of foreign powers. Not only do foreign powers engage in spying in the United States to obtain information, they also engage in activities which are intended to harm the Nation's security by affecting the course of our Government, the course of public opinion, or the activities of individuals. Such activities may include political action (recruiting, bribery or influencing of public officials to act in favor of the foreign power), disguised propaganda (including the planting of false or misleading articles or stories), and harassment, intimidation, or even assassination of individuals who oppose the foreign power. Such activity can undermine our democratic institutions as well as directly threaten the peace and safety of our citizens.

On the other hand, there may often be a narrow line between covert action and lawful activities undertaken by Americans in the exercise of their first amendment rights. Because of this, a stricter standard has been created—stricter than that applicable to "clandestine intelligence gathering activities"—which must be satisfied before a person may be targeted as an agent of a foreign power under this definition.

First, the person must be shown to be acting "pursuant to the direction of an intelligence service or network of a foreign power." No such showing is required for any of the other definitions of agent of a foreign power. Americans may well communicate with non-intelligence personnel from the government of a country about which they have an interest to gain information or engage in efforts on behalf of that country, but this is not covert action and it is not intended to be covered by this definition.

Second, the activities engaged in must presently involve or be about to involve a violation of Federal criminal law. Again, this is a higher standard than is found in the other definitions, where the activities "may" involve a violation of law. In this area where there is a close line between protected First Amendment activity and the activity giving rise to a search, it is most important that where a search does occur the activity be such that it involves or is about to involve a violation of a Federal criminal statute.

There are a number of crimes that might be involved in covert actions, for example, bribery of public officials, campaign law violations, foreign agent registration requirements, denial of civil rights, et cetera. It is important to note, however, that the fact of a criminal violation does not establish or even necessarily suggest, that a person is engaged in "any other clandestine intelligence

activity." Americans through ignorance or inadvertence may well technically violate campaign law requirements or foreign agent registration requirements, and such violations do not even justify electronic surveillance for law enforcement purposes, see 18 U.S.C. section 2516. Under this definition it is necessary to show separately from the criminal violation that the facts support a probable cause to believe that the person is, pursuant to the direction of an intelligence service or network of a foreign power, knowingly engaged in any other clandestine intelligence activities for or on behalf of such foreign power.

The intent of this provision is to enable search of the property of those hard-core agents who are writing as to what they are doing and who are intentionally carrying out the bidding of a foreign power's intelligence service to engage in covert action in the United States.

(C) SABOTAGE OR TERRORISM

Paragraph (2)(C) allows physical search of the property of any person, including a U.S. person, who knowingly engages in sabotage or international terrorism, or activities which are in preparation therefor, for or on behalf of a foreign power. The terms "sabotage" and "international terrorism" are defined separately and require a showing of criminal activity. Again, in no event is mere sympathy for, identity of interest with, or vocal support for the goals of a foreign group, even a foreign-based terrorist group, sufficient to justify surveillance under this subparagraph.

[The "preparation" standard does not mean preparation for a specific violent act, but for activities that involve violent acts. It may reasonably be interpreted to cover providing the personnel, training, funding or other means for the commission of acts of international terrorism. It also permits physical search at some point before the dangers sought to be prevented actually occur.]

The term "activities which are in preparation" for sabotage or international terrorism is intended to encompass activities supportive of acts of serious violence—for example, purchase or surreptitious importation into the United States of explosives, planning for assassinations or financing or training for such activities. Of course, other activities supportive of terrorist acts could in other circumstances likewise satisfy this standard. The circumstances must be such as would lead a reasonable man to conclude that there is probable cause to believe the person is knowingly engaged in activities which are in preparation for sabotage or terrorism.

The term "preparation" does not require evidence of preparation for one specific terrorist act, because the definition of "international terrorism" speaks of "activities that involve violent acts" and means a range of acts, not just a single act. Here, the term, "preparation" acquires its meaning in the context of the special definition of "international terrorism," which could reasonably be interpreted to cover, for example, providing the personnel, training, funding, or other means for the commission of acts of terrorism, rather than one particular bombing. The "preparation" provision permits physical search at some point before the danger sought to be prevented—for example, a kidnaping, bombing, or hijacking—actually occurs. This standard is in no way intended to dilute the requirement of knowledge, or the requisite connection with a "foreign power" as defined in FISA.

It is clearly not the intent to permit physical search solely on the basis of information that someone might commit acts of international terrorism or sabotage in the distant future. There must be a showing that the person is currently engaged in activities which are in preparation for the commission of such acts.

The "preparation" standard would allow physical search where the Government cannot establish probable cause that an individual has already knowingly engaged in sabotage or terrorism, but where there are specific and articulable facts to indicate that the individual's activities are in preparation for sabotage or international terrorism. The judge is expected to take all the known circumstances into account. The circumstances must be such as would lead a reasonable man to conclude that there is probable cause to believe the person is knowingly engaged in activities which are in preparation for sabotage or terrorism.

It should be noted that the "preparation" standard only need apply where there is insufficient evidence to show that the person is in fact a terrorist. Where the Government can show that the person is a known international terrorist, like the notorious "Carlos," or that the person has been engaging in international terrorism for or on behalf of a group engaged in international terrorism, there is no need to show that the person is in the act of preparing for further terrorist acts. One might wonder why the Government would not immediately arrest such persons. In some cases they may not have violated U.S. law, even though they may have murdered hundreds of persons abroad. In other cases it may be more fruitful in terms of combating international terrorism to monitor the activities of such persons in the United States to identify otherwise unknown terrorists here, their international support structure, and the location of their weapons or explosives. If a person who has engaged in international terrorism visits the United States or resides in the United States, the Government would be able to conduct a search to determine his activities, whether or not there is evidence to show he is presently planning some particular violent act.

Finally, any person targeted for search under this paragraph must be shown to have a knowing connection with the "foreign power" for whom he is working. In the case of international terrorism, it is anticipated that in most cases this connection will be shown to exist with a group engaged in international terrorism. The case may arise where a U.S. person is acting for or on behalf of such a group that is substantially composed of U.S. persons. In such a case, the judge must examine the circumstances carefully to determine whether the organization is "a group engaged in international terrorism," as defined, and not a purely domestic group engaged in domestic terrorism.

(D) AIDING, ABETTING AND CONSPIRACY

Paragraph 2(D) allows physical search of the property of any person, including a U.S. person, who knowingly aids or abets any person in the conduct of activities described in subparagraphs (2)(A)–(C) above, or knowingly conspires with any person to engage in such activities. The knowledge requirement is applicable to both the status of the person being aided by the proposed target of the search and the nature of the activity being promoted. This standard requires the Government to establish probable cause that the prospective target knows both that the person with whom he is conspiring or whom he is aiding or abetting is engaged in the described activities as an agent of a foreign power and that his own conduct is assisting or furthering such activities. The innocent dupe who unwittingly aids a foreign intelligence officer cannot be targeted under this provision. In the case of a person alleged to be knowingly aiding or abetting those engaged in international terrorism on behalf of a foreign power, such a person might be assisting a group engaged in both lawful political activity and unlawful terrorist acts. In such a case, it would be necessary to establish probable cause that the individual was aware of the terrorist activities undertaken by the group and was knowingly furthering them, and not merely that he was aware of and furthering the group's lawful activity.

An illustration of the "knowing" requirement is provided by the case of Dr. Martin Luther King, Jr. Dr. King was subjected to electronic surveillance on "national security grounds" when he continued to associate with two advisors whom the Government had apprised him were suspected of being American Communist Party members and by implication, agents of a foreign power. Dr. King's mere continued association and consultation with those advisers, despite the Government's warnings, would clearly not have been a sufficient basis under this title to target Dr. King's property for physical search.

Indeed, even if there had been probable cause to believe that the advisers alleged to be Communists were engaged in criminal clandestine intelligence activity for a foreign power within the meaning of this section, and even if there were probable cause to believe Dr. King was aware they were acting for a foreign power, it would also have been necessary under this title to establish probable cause that Dr. King was knowingly engaged in furthering his advisers' criminal clandestine intelligence activities. Absent one or more of these required showings, Dr. King could not have been found to be one who knowingly aids or abets a foreign agent.

As was noted above, however, the "knowing" requirement can be satisfied by circumstantial evidence, and there is no requirement for the Government to disprove lack of knowledge where the circumstances were such that a reasonable man would know what he was doing.

INTERNATIONAL TERRORISM

The term "international terrorism" is defined in section 101(c) of FISA as follows:

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnaping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the location in which their perpetrators operate or seek asylum.

Subsection 101(c) of FISA defines the term "international terrorism" by requiring three separate aspects of activities to be shown. The first aspect describes the nature of the acts involved in the activity: the activities must involve "violent acts or acts dangerous to human life" which are a violation of either State or Federal law, or which, if com-

mitted in the United States, would violate either State or Federal law. The violent acts covered by the definition mean both violence to persons and grave or serious violence to property.

The Congress intends that the property of terrorists and saboteurs acting for foreign powers should be subject to search under this title when they are in the United States, even if the target of their violent acts has been within a foreign country and therefore outside actual Federal or State jurisdiction. This departure from a strict criminal standard is justified by the international responsibility of governments to prevent their territory from being used as a base for launching terrorist attacks against other countries as well as to aid in the apprehension of those who commit such crimes of violence. We demand that other countries live up to this responsibility and it is important that in our legislation we demonstrate a will to do so ourselves.

The second aspect of this definition relates to the purpose to which the activities are directed. The purpose of the terrorist activities must be either intimidation of the civilian population, the intimidation of national leaders in order to force a significant change in government policy, or the affecting of government conduct by assassination or kidnaping. Examples of activities which in and of themselves would meet these requirements would be: the detonation of bombs in a metropolitan area, the kidnaping of a high-ranking government official, the hijacking of an airplane in a deliberate and articulated effort to force the government to release a certain class of prisoners or to suspend aid to a particular country, the deliberate assassination of persons to strike fear into others to deter them from exercising their rights or the destruction of vital governmental facilities. Of course other violent acts might also satisfy these requirements if the requisite purpose is demonstrated.

The third aspect of this definition relates to the requirement that the activities be international or foreign in scope. The terrorist activities must occur totally outside the United States or otherwise be international in character. Thus, if a member of the Baader-Meinhof Group or the Japanese Red Army, who has engaged in terrorist acts abroad, comes to the United States, he or she may be immediately placed under surveillance. If the activities have not occurred totally outside the United States, then it must be shown that the activities transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the location in which their perpetrators operate or seek asylum. Remembering that this is a definition of "international terrorism," there must be a substantial international character with respect to these considerations. The fact that an airplane is hijacked while flying over Canada between Alaska and Chicago does not itself make the activity international terrorism. A domestic terrorist group which explodes a bomb in the international arrivals area of a U.S. airport, does not by this alone become engaged in international terrorism. However, if a domestic group kidnaps foreign officials in the United States or abroad to affect the conduct of that foreign government this would be international terrorism. Finally, if a domestic terrorist group receives direction or substantial support from a foreign government or a foreign terrorist group, its terrorist activities made possible by that support or conducted in response to that direction could be international terrorism. It is important, however, to recognize that this substantial support or direction must already have been established before a search could be authorized. This definition does not allow search of the property of Americans merely to determine if they are receiving foreign support or direction. Moreover, support is not intended to include moral or vocal support. It must be material, technical, training, or other substantive support, and the support must be of the activities involving terrorist acts, not just general support to a group which may engage in both terrorist activities as well as other lawful activities. Direction means direction and does not mean suggestions.

Activities parallel to or consistent with the desires of a foreign power do not by themselves satisfy the requirement that the foreign power is directing the group. Finally, the fact that particular members of a domestic group engage in international terrorism does not mean that all members of that group are similarly engaged.

SABOTAGE

The term "sabotage" is defined in section 101(d) of FISA as follows:

(d) "Sabotage" means activities that involve a violation of chapter 105 of title 18, United States Code, or that would involve such a violation if committed against the United States.

Subsection (d) defines sabotage as activities which involve crimes under chapter 105 of title 18, United States Code, if conducted against the United States. By its terms, chapter 105 makes criminal only acts of sabotage against U.S. Government facilities. The definition of sabotage in this title is expanded to include similar acts when committed against a State or another nation's facilities and materials relating to defense. Thus, sabotage directed against state and local police facilities and equipment, or against the defense facilities of foreign nations, would constitute sabotage under this definition. Of course, a physical search under this title could be undertaken only if such sabotage was knowingly conducted for or on behalf of a "foreign power" as defined and the information sought constituted foreign intelligence information as defined. Where persons have knowingly engaged in sabotage of State or foreign facilities for or on behalf of a foreign power, the property of such persons should be subject to physical search in this country for foreign intelligence purposes even in the absence of probable cause to believe that they will engage in sabotage against Federal facilities.

FOREIGN INTELLIGENCE INFORMATION

The primary thrust of this bill is to protect Americans both from improper activities by our intelligence agencies as well as from hostile acts by foreign powers and their agents. Any information which relates to these general security and foreign relations concerns can help protect Americans and their interests from hostile activities of foreign powers. Where this information does not concern U.S. persons, the countervailing privacy considerations militating against seeking such information through physical search are outweighed by the need for the information. Therefore, the definition of foreign intelligence information includes any information relating to these broad security or foreign relations concerns, so long as the information does not concern U.S. persons. Where U.S. persons are involved, the definition is much stricter; it requires that the information be "necessary" to these security or foreign relations concerns.

Where the term "necessary" is used, the Congress intends to require more than a showing that the information would be useful or convenient. The Congress intends to require a showing that the information is both important and required. The use of this standard is intended to mandate that a significant need be demonstrated by those seeking the search. For example, it is often contended that a counterintelligence officer or intelligence analyst, if not the policymaker himself, must have every possible bit of information about a subject because it might provide an important piece of the larger picture. In that sense, any information related to the specified purposes might be called "necessary" but such a reading is clearly not intended.

Subparagraph (e)(1)(A) of the FISA definition defines foreign intelligence information as information which relates to, and if concerning a U.S. person, is necessary to, the ability of the United States to protect against actual or potential attack or other grave hostile acts of foreign power or its agents. This category is intended to encompass information which relates to foreign military capabilities and intentions, as well as acts of force or aggression which would have serious adverse consequences to the national security of the United States. The term "hostile acts" must be read in the context of the subparagraph which is keyed to actual or potential attack. Thus, only grave types of hostile acts would be envisioned as falling within this provision.

Subparagraph (e)(1)(B) of the FISA definition includes information which relates to, and if concerning a U.S. person, is necessary to, the ability of the United States to protect itself against sabotage or terrorism by a foreign power or foreign target. It is anticipated that the type of information described in this subparagraph will be the type sought when a physical search is targeted against the type of foreign power defined in section 101(a)(4) of FISA, or against the type of foreign agent defined in section 101(b)(2)(C) of FISA.

Subparagraph (e)(1)(C) of the FISA definition includes information which relates to, and if concerning a U.S. person, is necessary to, the ability of the United States to protect against the clandestine intelligence activities by an intelligence service or network of a foreign power or by a foreign agent. This subparagraph encompasses classic counterintelligence information.

This subsection is not intended to encompass information sought about political activity by U.S. citizens allegedly necessary to determine the nature and extent of any possible involvement in those activities by the intelligence services of foreign powers. Such a dragnet approach to counterintelligence has been the basis for improper investigations of citizens prior to the enactment of FISA and is not intended to be a permissible avenue of "foreign intelligence" collection under this subparagraph. Nor does this subparagraph include efforts to prevent "newsleaks" or to prevent publication of such leaked information in the American press, unless there is reason to believe that such leaking or publication is itself being done by an agent of a foreign intelligence service to harm the national security.

Information about a U.S. person's private affairs is not intended to be included in the meaning of "foreign intelligence information" unless it may relate to his activities on behalf of a foreign power. For example, the Government should not seek purely personal information about a U.S. citizen or

permanent resident alien, who is a suspected spy, merely to learn something that would be "compromising." This restriction might not be applicable to agents of foreign powers as defined in section 101(b)(1) of FISA, because compromising information about their private lives may itself be foreign intelligence information.

It should be noted that under paragraph (e)(1) of the FISA definition there is no requirement that the attack, grave hostile act, sabotage, terrorism, or clandestine intelligence activities be directed against the United States in order for information to constitute "foreign intelligence information," as defined. Obviously, armed attacks and similar grave hostile acts against any nation in this interdependent world more often than not directly affect the security and foreign relations of all countries. War in the Mid East or in the Horn of Africa, for example, inevitably involves this nation's security and foreign relations. Sabotage and international terrorism also, even if confined to one foreign country, may indeed affect the interests and security of the United States. The kidnaping of a high official of an allied nation can affect the course of government and security of that nation, thereby affecting this nation's security and foreign relations. Finally, clandestine intelligence activities of one nation directed against another can easily affect this nation. This occurred in West Germany where Soviet spies in the German Defense Ministry compromised NATO secrets, which included American secrets. It can also occur when other nations engage in clandestine intelligence activities against one another in the United States.

Finally, the term "foreign intelligence information," especially as defined in subparagraphs (e)(1)(B) and (e)(1)(C) of FISA, can include evidence of certain crimes relating to sabotage, international terrorism, or clandestine intelligence activities. With respect to information concerning U.S. persons, foreign intelligence information includes information necessary to protect against clandestine intelligence activities of foreign powers or their agents. Information about a spy's espionage activities obviously is within this definition, and it is most likely at the same time evidence of criminal activities. How this information may be used "to protect" against clandestine intelligence activities is not prescribed by the definition of foreign intelligence information, although, of course, how it is used may be affected by minimization procedures, see section 410(c) of this title, infra. And no information acquired pursuant to this title could be used for other than lawful purposes, see section 404(a) of this title. Obviously, use of "foreign intelligence information" as evidence in a criminal trial is one way the Government can lawfully protect against clandestine intelligence activities, sabotage, and international terrorism. This title, explicitly recognizes that information which is evidence of crimes involving clandestine intelligence activities, sabotage, and international terrorism can be sought, retained, and used pursuant to this title.

Paragraph (e)(2) of the FISA definition includes information which relates to, and if concerning a U.S. person, is necessary to, (A) the national defense or the security of the Nation or (B) the conduct of the foreign affairs of the United States. This also requires that the information sought involve information with respect to foreign powers or territories, and would therefore not include information about the views or planned statements or activities of Members of Congress, executive branch officials, or private citizens concerning the foreign affairs or national defense of the United States. The information must pertain to a foreign power or foreign territory; and thus it cannot simply be information about a citizen of a foreign country who is visiting the United States unless the information would contribute to meeting intelligence requirements with respect to a foreign power or territory. With these limitations, the Congress believes that the adoption of a "relates to" standard would not authorize improper treatment. In this regard, the Congress fully intends that the vigorous exercise of its oversight authority will provide another valuable check.

ATTORNEY GENERAL

Subsection 101(g) of FISA defines "Attorney General" to mean the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General. The Deputy Attorney General is appropriate because, as the second-ranking official in the Justice Department, he would most often be the Acting Attorney General in the Attorney General's absence.

UNITED STATES PERSON

The definition of "United States person" in section 101(i) of FISA reads as follows:

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

This title is designed to afford primary protection to "United States persons." Thus, minimization is only required with respect to information concerning U.S. persons; the definition of "foreign intelligence information" is much broader where non-U.S. persons are involved; and the definition of "agent of a foreign power" is broader for non-U.S. persons. Associations or corporations which would otherwise be United States persons are excluded from the definition if they are also within the first three subdefinitions of "foreign power," see section 101(a)(1)-(3) of FISA, no matter what their membership or place of incorporation.

The definition treats as "United States persons" groups allegedly engaged in international terrorism, see section 101(a)(4) of FISA, and entities allegedly covertly controlled and directed by a foreign government or governments, see section 101(a)(6) of FISA, if they are substantially composed of U.S. citizens or permanent resident aliens or incorporated in the United States, and foreign-based political organizations if they are incorporated in the United States. This does NOT in any way prohibit searches targeted against such associations or corporations if they meet the definition of "foreign power." Where the definition of "foreign intelligence information" applies to information concerning such entities, the information must be "necessary" to the national security or foreign relations concerns. This is critical where the target of a search is "an entity directed and controlled by a foreign government or governments," see section 101(a)(6) of FISA. Such an entity may be entirely composed of U.S. citizens; it may also be engaged in totally lawful and proper activities. There may be a legitimate need for a search targeted at such an entity where it is directed and controlled by a foreign government or governments, but this non-criminal standard can only be supported so long as such entities, which are either incorporated in the United States or substantially composed of U.S. citizens or permanent resident aliens, are treated as United States persons. The added scrutiny that results from a determination that the information is "necessary" is the minimum which can justify such a broad targeting standard with respect to an entity composed of Americans or incorporated in the United States.

In addition, information concerning entities which are incorporated in the U.S. or which are substantially composed of Americans is subject to minimization even if the entities also might be foreign powers, as defined in section 101(a)(4)-(6) FISA. Where a judge has approved the targeting of such an entity and the information sought is necessary, it is not expected that much minimization would be required as to the entity. For instance, if a group of Americans is a group engaged in international terrorism, it is expected that almost all information about the group would be "necessary" to the United States to protect against international terrorism. However, a domestic political group might be found by a judge to be covertly directed and controlled by a foreign government, and information concerning that direction and control might be found necessary to protect the United States against clandestine intelligence activities. But that entity might also engage in legitimate political activities not relating to the foreign government's direction and control. In such a circumstance, minimization is both appropriate and important.

The special protections afforded U.S. persons are not appropriate where an association or corporation is a "foreign power" as defined in section 101(a)(1)-(3) of FISA. The entities covered by these subdefinitions are not subject to much doubt. They are all "official" foreign powers more likely than not flying a foreign flag outside their door. Thus, there is little opportunity for error or abuse by intelligence agencies.

The term "unincorporated association" in the definition of "United States person" is meant to include any group, entity, or organization which is not incorporated under the laws of the United States or of any State. The term "members" here, as opposed to its use in section 101(b)(1)(A) of FISA, is not intended, of course, to be limited to formal, card-carrying members. For instance, an unincorporated commercial establishment's employees would be members under this definition. The Congress intends the reference to "a substantial number of members" to be equivalent to the term "substantially composed of" used in parts (2) and (5) of the FISA definition of "foreign power." In both contexts the words "substantial" or "substantially" require that there be a significant proportion, but less than a majority. The judge is expected to take all the known circumstances into account in determining whether an association is a "United States person."

UNITED STATES

The term "United States" is defined as follows in section 101(j) of FISA:

(j) "United States," when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

As defined, the United States includes all areas under the territorial sovereignty of the

United States whether incorporated or not, e.g., Puerto Rico, Guam, the Virgin Islands, and American Samoa. The Trust Territory of the Pacific Islands is not, at this time, under the territorial sovereignty of the United States. It is, however, included in the term "United States" for the purposes of this title, so long as it is under the trusteeship of the United States. At such time as all or part of the Trust Territory enters into as Commonwealth relationship with the United States, it is intended that any such part be considered under the territorial sovereignty of the United States. If the trusteeship is ended with parts or all of those islands becoming independent, this title would not apply to those parts.

The term "territorial sovereignty" in the definition does not include U.S. embassies, consulates, military or other U.S. flag vessels outside the United States, etc.; it does include land in the United States occupied by foreign embassies, consulates, missions, etc. Despite the fact that foreign missions are sometimes referred to as being "extraterritorial," all national maintain territorial sovereignty over foreign missions and may expel, as persona non grata, persons therein and condemn the property by right of eminent domain. Military bases and areas under military occupation abroad (e.g., the United States sector in West Berlin) are not under the territorial sovereignty of the United States.

In this title terms such as "foreign-based" and "foreign territory" refer to places outside the "United States," as defined here.

PERSON

The term person is defined in section 101(m) of FISA to mean any individual, including any officer or employee of the Federal Government, or any group, entity, association corporation, or foreign power. "Person" is defined in the broadest sense possible. It is intended to make explicit that entities can be persons, where the term "person" is used. For example, while it is expected that most entities would be targeted under the "foreign power" standard (which cannot be applied to individuals), it is possible that entities could be targeted under certain of the "agent of a foreign power" standards, see section 101(b)(2)(A)-(D) of FISA. Where it is intended that only natural persons are referred to, the term "individual" U.S. person or "individual" person is used.

STATE

The term "State" is defined in section 101(o) of FISA to mean any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

PHYSICAL SEARCH

Section 409(b) of this title defines "physical search" to mean any physical intrusion into premises or property (including examination of the interior of property by technical means) or any seizure, reproduction or alteration of information, material or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include "electronic surveillance" as defined in subsection 101(f) of FISA. The definition expressly includes "altering" property so as to ensure that the court is informed and approves of any planned physical alteration of property incidental to a search, e.g., the replacement of a lock so as to conceal the fact of the search.

This definition is meant to be broadly inclusive, because the effect of including a particular means of search is not to prohibit it but to subject it to the statutory procedures. It is not means, however, to require a court order in any case where a search warrant would not be required in an ordinary criminal context. The provision that "a warrant would be required for law enforcement purposes" does not mean that a court must previously have required a warrant for the particular type of search carried out under this title. The techniques involved may not have come before a court for determination as to whether a warrant is required. Nevertheless, the search activity is intended to be covered if a warrant would be required for law enforcement purposes, as determined on the basis of an assessment of the similarity with other activities which the courts have ruled upon, and the reasonableness of the expectation of privacy that a U.S. person would have with respect to such activity.

In response to questions during the deliberations on FISA, the Department of Justice opined that foreign governments—and in some circumstances their diplomatic agents have no fourth amendment rights under the Constitution. By letter of April 19, 1978, from John Harmon, Assistant Attorney General, Office of Legal Counsel, to Chairman Boland of the House Intelligence Committee, the Department of Justice opined that foreign states and their official agents, to the extent that they are not subject to our laws, are not protected by the fourth amendment. Whether the Department of Justice is correct in its opinion, on an issue which has never been addressed by any court, the coverage of the definition of "physical search" is not intended—by the use of the words "a warrant would be required for law enforcement purposes"—to exclude searches merely because they are targeted against an entity or person not entitled to protection under the fourth amendment. Rather, the phrase is intended to exclude only those search activities which would not require a warrant even if a U.S. person were the target. The Congress expects that, if an agency wishes to use a new technique in the United States affecting private information, material or property without consent, it will seek a ruling from the Attorney General as to whether the technique requires a court order. The intelligence committees should be advised of such rulings.

Law enforcement officials may, if they wish, continue to obtain an ordinary search warrant if the facts and circumstances justify it.

MINIMIZATION PROCEDURES

The minimization procedures of this title provide vital safeguards because they regulate the acquisition, retention, and dissemination of information about U.S. persons, including persons who are not the authorized targets of a physical search. For example, a document written by an entirely innocent American may be seized in a search targeted for someone else. Or an American may be the sender or recipient of property that is searched because it is in transit to or from an agent of a foreign power or a foreign power. The procedures also protect Americans who are referred to in documents or other information seized or reproduced in a physical search.

Section 409(C) of this title defines "minimization procedures," with respect to physical search, in three paragraphs that are similar to the definitions of this term in section 101(h) of FISA.

Paragraph (c)(1) defines "minimization procedures" as specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purposes and techniques of the particular physical search, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information.

The definition begins by stating that the minimization procedures must be specific procedures. This is intended to demonstrate that the definition is not itself a statement of the minimization procedures but rather a general statement of principle which will be given content by the specific procedures which will govern the actual searches. It is also intended to suggest that the actual procedures be as specific as practicable in light of the search technique and its purposes.

The definition that states that the procedures must be "reasonably designed in light of the purposes and technique of the particular physical search." It is recognized that minimization procedures may have to differ depending on the search technique. For instance, minimization with respect to searches of packages entrusted to couriers would not be comparable to searches involving entry of residential premises.

The definition of minimization speaks in terms of minimizing acquisition and retention and prohibiting dissemination.

The Congress recognizes that in some cases it may not be possible or reasonable to avoid acquiring irrelevant information in a physical search. It is recognized that given the nature of intelligence gathering minimizing acquisition should not be as strict as for law enforcement searches. By minimizing retention the Congress intends that information acquired, which is not necessary for obtaining, producing, or disseminating foreign intelligence information, be destroyed where feasible and appropriate, as with copies of photographed or reproduced documents. In certain cases destruction might take place almost immediately, while in other cases the information might be retained for a reason in order to determine whether it did indeed relate to one of the approved purposes. Procedures governing minimization—particularly how long information should be retained and how it should be destroyed once it is deemed irrelevant—are normally approved by the court and subject to judicial supervision.

The Congress recognizes that it may not be feasible to cut and paste documents or other materials where some information is relevant and some is not. Therefore, minimizing retention can also include other measures designed to limit retention of such irrelevant material to an essentially non-usable form.

The standard for dissemination is higher than for acquisition and retention, but the prohibition on dissemination should be designed to be consistent with the need of the United States to obtain, produce, and disseminate until that determination was made (or would only be disseminated to those who could determine its usefulness). Even with respect to information needed for an approved purpose, dissemination should be restricted to those officials with a need for such information. And, again, the judge, in approving the minimization procedures, could require specific restrictions on the retrieval of such information.

There are a number of means and techniques which the minimization procedures may require to achieve the purpose set out

in the definition. These may include, where appropriate, but are not limited to:

(A) destruction of unnecessary information acquired;

(B) provision with respect to what may be filed and on what basis, what may be retrieved and on what basis, and what may be disseminated, to whom and on what basis;

(C) provision for the deletion of the identity of United States persons where not necessary to assess the importance or understand the information;

(D) provision relating to the proper authority in particular cases to approve the retention or dissemination of the identity of United States persons;

(E) provision relating to internal review of the minimization process; and

(F) provision relating to adequate accounting information concerning United States person used or disseminated.

Minimization, however, is not required with respect to all information which may be acquired by physical search. First, publicly available information need not be minimized. By publicly available, the Congress means information which in fact is generally available to the public. Such information can include generally published information or information in the public record which is generally available to the public, e.g., statements of incorporation on file in state offices. Also included would be trade names such as a Xerox copier, a Boeing 747, etc. Second, where a person has consented to waive minimization with respect to the acquisition, retention, or dissemination of information about him through physical search, no minimization is required. The Congress intends that this consent be explicit and informed. A general authorization to obtain information about him, such as may be made by a person seeking Government employment, is not sufficient. As here used, consent to waive minimization must be specific with respect to the acquisition, retention, and dissemination of information concerning the person acquired by physical search. There is not, however, any requirement that the person know the time, manner, purpose, or target of any particular search. It is expected that this allowance will be used rarely and then with respect to high ranking Government officials. Obviously, a refusal to consent should not in any sense be held against a person.

Finally, only information concerning a United States person need be minimized. This includes both documents written by a United States person as well as documents which he has not prepared but which mention him. The Supreme Court has held that persons have no constitutionally protected right of privacy with respect to what others say about them. See ALDERMAN v. UNITED STATES, 394 U.S. 195 (1968). Nevertheless, the Executive Branch in its own procedures has demonstrated that it can minimize retention and prohibit dissemination of such information consistent with legitimate foreign intelligence needs. Recognizing the less substantial privacy interest in such information, however, the "reasonably designed" procedures may take account of the differences between information in which persons have a constitutionally protected interest and that in which they do not. Therefore, more flexibility in the procedures may be afforded with respect to information concerning U.S. persons obtained from documents written by others. Of course, information concerning U.S. persons may come in other circumstances where their privacy is invaded; in such situations the person whose property is searched has had his privacy interests invaded and minimization procedures are required.

Because minimization is only required with respect to information concerning U.S. persons, where materials seized or reproduced are encoded or otherwise not processed, so that the contents are unknown, there is no requirement to minimize the acquisition and retention, or to prohibit the dissemination, of such materials until their contents are known. Nevertheless, the minimization procedures can be structured to apply to other agencies of Government, so that if any agency different from the searching agency decodes or processes the materials, it could be required to minimize the retention and dissemination of information therein concerning U.S. persons.

It is recognized that writers of documents are unlikely to state that they are or are not U.S. persons. Intelligence officers and analysts therefore must use their judgment as to when the procedures apply. While not suggesting that the procedures require the following, as a general rule, persons in the United States might be presumed to be U.S. persons unless there is some reason to believe otherwise. The Congress does not intend or expect, however, that intelligence officers will destroy possibly meaningful information merely because there is a question whether a person is a U.S. person.

The definition states that minimization procedures must minimize acquisition and retention, and prohibit dissemination, of information subject to minimization "consistent with the need of the United States to obtain produce, and disseminate foreign intelligence information."

"Foreign intelligence information" is, of course, a defined term, with respect to U.S. persons, it must be "necessary" to the listed security and foreign relations purposes. However, the definition of "minimization procedures" does not state that only "foreign intelligence information" can be acquired, retained, or disseminated. The Congress recognizes full well that bits and pieces of information, which taken together could not possibly be considered "necessary," may together or over time take on significance and become "necessary." Nothing in this definition is intended to forbid the retention or even limited dissemination of such bits and pieces before their full significance becomes apparent.

An example would be where the Government conducts a surreptitious entry to photograph papers and effects of a known spy, who is a U.S. person. It is "necessary" to identify anyone working with him in his network, feeding him his information, or to whom he reports. Therefore, it is necessary to acquire, retain and disseminate information concerning all his contacts and acquaintances and movements. Among his contacts and acquaintances, however, there are likely to be a large number of innocent persons. Yet, information concerning these persons must be retained at least until it is determined that they are not involved in the clandestine intelligence activities and may have to be disseminated in order to determine their innocence. Where after a reasonable period of time, which may in fact be an extended period of time, there is no reason to believe such persons are involved in the clandestine intelligence activities, there should be some effort, for example, either to destroy the information concerning such persons, or seal the file so that it is not normally available, or to make the file not retrievable by the name of the innocent person. It is recognized that the failure to gather further incriminating information concerning the contacts or acquaintances of the spy does not necessarily mean they are in fact innocent—instead, they may merely be very sophisticated and well-versed in their espionage tradecraft. Therefore, for an extended period it may be necessary to have information concerning such acquaintances, for an investigation of another spy may indicate the same acquaintance, which may justify more intensive scrutiny of him, which then may result in breaking his cover. (It bears repeating that physical search could not be targeted against such acquaintances until it could be shown that they were in fact agents of foreign powers, as defined.)

It is disconcerting to some that mere association with an alleged spy may be enough to cast suspicion on a person such that his innocence must be established. It seems contradictory to one of our basic tenets that a person is presumed innocent in the eyes of the law until proven guilty. However, in intelligence as in law enforcement, leads must be followed. Especially in counterintelligence cases where often trained professional foreign intelligence personnel are involved, a lead which initially ends in a "dry hole" can hardly be considered a dead issue, although it may be temporarily shelved to divert limited resources to other leads. Therefore, this Congress intends that a significant degree of latitude be given in counterintelligence and counterterrorism cases with respect to the retention of information and the dissemination of information between and among counterintelligence components of the Government.

On the other hand, given this degree of latitude the Congress believes it imperative that with respect to information concerning U.S. persons which is retained as necessary for counterintelligence or counterterrorism purposes, rigorous and strict controls be placed on the retrieval of such identifiable information and its dissemination or use for purposes other than counterintelligence of counterterrorism.

In this regard, it is important to note two points governing dissemination. First, the procedures should recognize that use within an agency may be subject to minimization. Many agencies have widely disparate functions themselves, or are subordinate elements of departments which have functions totally unrelated to intelligence. It is the intent of the Congress that use within an agency is potentially subject to minimization. While restrictions on use within an agency need not necessarily be the same as the restrictions on interagency dissemination, it is clear that some controls on interagency use are appropriate.

Second, some might consider that any derogatory information concerning a person holding a security clearance or concerning a person who in the future might be considered for a security clearance would be information disseminable as being for "counterintelligence" purposes. This is not intended. The latitude the Congress intends to afford counterintelligence components with respect to retention and dissemination between them of information for counterintelligence and counterterrorism purposes is not designed or intended to allow the same latitude for general personnel security purposes.

Where the purpose of a search is not counterintelligence or counterterrorism, there is not the same compelling need for latitude in the retention of information concerning U.S. persons.

One of the results of minimizing retention and dissemination under this title is that

some information will be destroyed, retained in a non-identifiable manner, or sealed in a manner to prevent dissemination. Although there may be cases in which information acquired from a physical search for foreign intelligence purposes will be used as evidence of a crime, these cases are expected to be relatively few in number, unlike searches in criminal investigations the very purpose of which is to obtain evidence of criminal activity. In light of the relatively few cases in which information acquired under this title may be used as evidence, the better practice is to allow the destruction of information that is not foreign intelligence information or evidence of criminal activity. This course will safeguard the privacy of individuals more effectively, insuring that irrelevant information will not be filed. The Congress believes that existing criminal statutes relating to obstruction of justice will deter any efforts to tamper with evidence acquired under this chapter. Such destruction should occur, of course, only pursuant to the minimization procedures.

Destruction insures that the information cannot be used to "taint" a civil or criminal proceeding; accordingly, there is no requirement to index information which is destroyed or otherwise not used or disseminated.

The definition of minimization procedures states that the Attorney General shall adopt appropriate procedures. In most cases, of course, these procedures will be reviewed and approved, modified, or disapproved by the judge approving the physical search. In those cases where no warrant is required, no judge will review the procedures, and it is important that it is the Attorney General, as the chief law enforcement officer, who ultimately approves them. It is expected that the procedures adopted by the Attorney General will have been thoroughly coordinated with the affected agencies in the executive branch.

On the basis of the experience under FISA, the Congress recognizes that administrative need for minimization procedures to be as uniform as possible. This does not mean, however, that judges should not fully scrutinize proposed minimization procedures just because the same procedures have been approved by another judge in another case. Not only might the earlier judge have overlooked something, but also it is critical to determine at least that factors militating in favor of uniformity are not outweighed by other considerations. For instance, the Congress expects that minimization procedures for searches of the property of individuals would be more strict than those for searches of the property of foreign powers. If the judge believes a modification is called for, he should require it. If the Government finds the change unacceptable, it may, of course, appeal the decision to the special Court of Review.

Paragraph (2) of the definition requires that all minimization procedures contain a requirement that any information which is not foreign intelligence information as defined in section 101(e)(1) of FISA not be disseminated in a manner which identifies an individual United States person, without his consent, unless the identity is necessary to understand such foreign intelligence information or assess its importance. The purpose of this special dissemination standard is to protect United States persons from dissemination of information which identifies them in those areas where the Government's need for their identity is least established. The adjectival use of the name of a United States person entity, such as the brand name of a product, is not restricted by this provision because such information is publicly available.

Two exceptions are allowed to the prohibition on dissemination in paragraph (2). The first allows dissemination where a U.S. person's identity is "necessary to understand" foreign intelligence information. The person's identity must be needed to make the information fully intelligible. If the information can be understood without identifying the U.S. person, it should be disseminated that way. However, sometimes it might be difficult or impossible to make sense out of the information without a U.S. person's identity. The second exception allows dissemination where a U.S. person's identity is necessary to "assess [the] importance" of foreign intelligence information. The word "importance" means important in terms of the interests set out in the definition of foreign intelligence information. "Necessary" does not mean that the identity must be essential to understand the information or assess its importance. The word necessary requires that a knowledgeable intelligence analyst make a determination that the identity will contribute in a meaningful way to the ability of the recipient of the information to understand the information or assess its importance.

Paragraph (3) of the definition allows retention and dissemination information which is evidence of a crime which has been, or is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes. As noted above, see section 101(e) of FISA, evidence of certain crimes like espionage would itself constitute "foreign intelligence information," as defined, because it is necessary to protect against clandestine intelligence activities by foreign powers or their agents. Similarly, much information concerning international terrorism would likewise constitute evidence of crimes and also be "foreign intelligence information," as defined. This paragraph does not relate to information, even though it constitutes evidence of a crime, which is also needed by the United States in order to obtain, produce or disseminate foreign intelligence information. Rather, this paragraph applies to evidence of crimes which otherwise would have to be minimized because it was not needed to obtain, produce, or disseminate foreign intelligence information. For example, in the course of a search evidence of a serious crime totally unrelated to intelligence matters might be incidentally acquired. Such evidence should not be required to be destroyed. Where the information is not foreign intelligence information, however, retention and dissemination of such evidence is allowed only for law enforcement purposes. Such purposes include arrest, prosecution, and other law enforcement measures taken for the purpose of preventing the crime. Thus, this paragraph is not a loophole by which the Government can generally keep and disseminate derogatory information about individuals which may be a technical violation of law, where there is no intent actually to enforce the criminal law. On the other hand, where the evidence also constitutes "foreign intelligence information," as defined, this paragraph does not apply, and the information may be disseminated and used for purposes other than enforcing the criminal law.

AGGRIEVED PERSON

Section 409(d) of this title defines "aggrieved person" to mean a person whose premises, property, information, or material is the target of physical search or any other person whose premises, property, information, or material was subject to physical search. As defined, the term is intended to be coextensive, but no broader than, those persons who have standing to raise claims under the Fourth Amendment with respect to physical search.

FOREIGN INTELLIGENCE SURVEILLANCE COURT

Section 409(e) of this title defines "Foreign Intelligence Surveillance Court" to mean the court established by section 103(a) of FISA, which provides that the Chief Justice of the United States shall publicly designate seven district court judges from seven of the United States judicial circuits who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this Act. Pursuant to section 103(d) of FISA, each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the first judges designated under subsection (a) were to be designated for terms of from one to seven years so that one term expired each year. As a result, there has been a regular annual rotation of at least one new judge onto the Foreign Intelligence Surveillance Court since 1979.

The legislative history of FISA established the intent of Congress that the court shall sit continuously in the District of Columbia, that the designated judges shall serve by rotation determined by the Chief Justice, that they may be assigned to other judicial duties in the District of Columbia which are not inconsistent with their duties under this Act, and that more than one judge shall be available at all times to perform the duties required by this Act. The Chief Justice is expected to consult with the chief of judges of the judicial circuits in making designations of judges under section 103 of FISA.

The FISA legislative history also stated that staffing of the court with at least one judge from each circuit would provide geographical diversity, and bringing the chief judges into the selection process would promote ideological balance. Requiring the special court to sit continuously in the District of Columbia would facilitate necessary security procedures and, by ensuring that at least one judge is always available, would ensure speedy access to it by the Attorney General when timeliness is essential for intelligence purposes. It was anticipated that only one or two judges would be in Washington, on a rotating basis, at any given time. Such a procedure would minimize judge shopping and would make it unlikely that an application for an order for the same target would be heard by the same judge who granted the earlier order for that target.

COURT OF REVIEW

Section 409(f) defines "Court of Review" to mean the court established by section 103(b) of FISA, which provides that the Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this Act. Pursuant to section 103(d) of FISA, judges designated under subsection (b) shall so serve for a maximum of seven years and shall not be eligible for redesignation. The judges first designated under subsection (b) were to be designated for terms of three, five, and seven years.

The FISA legislative history stated that the Chief Justice is expected to consult with the chief judges of the judicial circuits in making these designations. There is no requirement that the special court of review sit continuously as it is anticipated that the exercise of its functions will be rare.

EFFECTIVE DATE

Section 410 of this title states that the provisions of this title shall become effective 90 days after the date of enactment of this title, except that any physical search approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this title, if that search is conducted within 180 days following the date of enactment of this title pursuant to regulations issued by the Attorney general, which are in the possession of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives prior to the date of enactment.

This provision allows some flexibility in the timing of implementation of the statutory physical search procedures. The Congress intends that the Attorney General shall begin making applications for orders under this title and the court may grant such orders as soon as practicable after the effective date of this title. Prior to the first application, U.S. intelligence officers may conduct physical searches under the Executive branch procedures previously in effect. The Congress intends that after the Attorney General makes the first application to the court under this title, no subsequent physical search which requires a court order under this title shall be approved by the Attorney General without a court order. Searches approved by the Attorney General prior to that date, but not yet conducted, may be carried out so long as they occur within 180 days of enactment.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

● Mr. BRYAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received notification under rule 35 for Stuart Feldman, a member of the staff of Senator ORRIN G. HATCH, to participate in a program in Tokyo, Japan, sponsored by the Japan Center for International Exchange, from March 27 to April 2, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Feldman in this program.

The select committee received notification under rule 35 for Kenneth Nelson, a member of the staff of Congressman OBEY, to participate in a program in Japan, sponsored by the Japan Center for International Exchange, from March 27 to April 2, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Nelson in this program.

The select committee received notification under rule 35 for Dr. Weiss, a member of the staff of Senator GLENN, to participate in a program in Japan, sponsored by the Japan Atomic Industrial Forum, Inc., from February 12–19, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Dr. Weiss in this program.

The select committee received notification under rule 35 for Laura Hudson, a member of the staff of Senator JOHNSTON, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs from March 26 to April 10, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Hudson in this program.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

NATIONAL COMPETITIVENESS ACT

The PRESIDING OFFICER. The clerk will report the pending bill.

The assistant legislative clerk read as follows:

A bill (S. 4) to promote the industrial competitiveness and economic growth of the United States by strengthening and expanding the civilian technology programs at the Department of Commerce, amending the Stevenson-Wydler Technology Innovation Act of 1980 to enhance the development and nationwide deployment of manufacturing technologies, and authorizing appropriations for the Technology Administration of the Department of Commerce, including the National Institute of Standards and Technology, and for other purposes.

The Senate continued with the consideration of the bill.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion, previously filed by the majority leader.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Modified Committee Substitute to S. 4, the National Competitiveness Act of 1993.

Carol Moseley-Braun, John Glenn, Harlan Mathews, Wendell Ford, James J. Exon, Jay Rockefeller, Don Riegle, George Mitchell, Tom Daschle, Byron L. Dorgan, Barbara Boxer, Patrick Leahy, Fritz Hollings, Jeff Bingaman, Paul Simon, J. Lieberman, John F. Kerry.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate now return to morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNIZING OUTSTANDING SERVICE OF THE ARCHITECT OF THE CAPITOL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Senate Resolution 188, a resolution submitted earlier today by Senators MOYNIHAN and WARNER to recognize the outstanding service of the Architect of the Capitol for the restoration of the Statue of Freedom; that the resolution and preamble be agreed to; that the motion to reconsider be laid on the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the resolution (S. Res. 188) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 188

Whereas the Statue of Freedom Triumphant in Peace and War has stood atop the tholos of the United States Capitol Dome since December 2, 1863;

Whereas the Statue of Freedom has served since its installation as an object of great national pride and inspiration;

Whereas the Statue, modeled by the American sculptor Thomas Crawford in Rome, and cast by Clark Mills in Northeast Washington, D.C., using bronze made of zinc, Lake Superior copper, and tin purchased in New York, was found after inspection in 1988 to be suffering from rust and corrosion and to be in need of repair;

Whereas the plan developed by the Architect of the Capitol for carrying out the necessary repairs required great skill and expertise in historical restoration techniques as well as extraordinary feats of engineering for the removal and replacement of the Statue; and

Whereas Members of Congress, residents of Washington, D.C., and visitors watched with awe and appreciation as the Architect's plan unfolded, accomplishing the removal, restoration, and replacement of the Statue atop the Dome in time for the 200th anniversary of the laying of the cornerstone of the Capitol: Now, therefore, be it

Resolved, That the Architect of the Capitol, the Honorable George M. White, is recognized and commended for outstanding service to the Capitol and to the Nation for successfully restoring the original grandeur of the Statue of Freedom.

SEC. 2. The Secretary shall transmit a copy of this resolution to the Architect of the Capitol, the Honorable George M. White.

Mr. MOYNIHAN. Mr. President, I rise to submit a resolution recognizing and

commending the Architect of the Capitol, the Honorable George M. White, for the restoration of the Statue of Freedom Triumphant in Peace and War in time for the 200th anniversary of the laying of the cornerstone of the Capitol. Since its installation atop the tholos of the U.S. Capitol dome on December 2, 1863, the Statue of Freedom has served as an object of great national pride and inspiration. Modeled by the American sculptor Thomas Crawford in Rome, and cast by Clark Mills in Northeast Washington, DC, using bronze made of zinc, Lake Superior copper, and tin purchased in New York, the statue was found in 1988 to be suffering from rust and corrosion and to be in need of repair. With considerable daring and devotion to duty, the Architect of the Capitol personally went to inspect the statue in situ, 270 feet above the ground. What he found there required him to act quickly to save the statue.

The plan he developed for carrying out the necessary repairs required great skill and expertise in historical restoration techniques as well as extraordinary feats of engineering for the removal and replacement of the statue. Those up at dawn on May 9, 1993 watched in awe and admiration as the giant Skycrane helicopter removed the statue and laid it down before the east front. As the restoration work progressed over the summer, we were offered a splendid opportunity to see the statue close-up. But nothing could match the experience of watching the noble statue rise again on that lovely October day to her rightful place atop the dome. Nothing could be a more fitting cap to a celebration of the 200th anniversary of laying the cornerstone of the Capitol than the replacement of the Statue of Freedom atop its peak.

Mr. President, this is a resolution to recognize and commend the Architect of the Capitol, the Honorable George M. White, for the outstanding service he rendered to the Capitol and to the Nation by successfully restoring the grandeur of the Statue of Freedom atop the Capitol dome in time for that celebration, October 23, 1993.

COMMEMORATING THE 200TH ANNIVERSARY OF BOWDOIN COLLEGE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 189, a resolution commemorating the 200th anniversary of Bowdoin College, submitted earlier today by myself and Senator COHEN; that the resolution be agreed to; that the preamble be agreed to; that the motion to reconsider laid upon the table; and that a statement by myself and by Senator COHEN be placed in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the resolution (S. Res. 189) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 189

Whereas Bowdoin College was established in 1794 by the General Court of the Commonwealth of Massachusetts as the first college in the District of Maine;

Whereas, since 1802, Bowdoin College has educated students from Maine, the rest of the Nation, and many foreign countries on the principle that: "literary institutions are founded and endowed for the common good and not for the private advantage of those who resort to them for education";

Whereas alumni of Bowdoin College have included 1 President of the United States, 16 Members of the Senate, 42 Members of the House of Representatives, 2 Supreme Court Justices, and many other public officials;

Whereas other distinguished alumni of Bowdoin College have included authors Nathaniel Hawthorne and Henry Wadsworth Longfellow, Civil War hero and the Governor of Maine Joshua Chamberlain, Arctic explorer Admiral Robert E. Peary, and Olympic gold medalist Joan Benoit Samuelson; and

Whereas Bowdoin College is consistently named one of the Nation's most outstanding liberal arts colleges: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the contributions made by Bowdoin College to the State of Maine and the Nation over the past 200 years;

(2) extends heartiest congratulations to the students, alumni, faculty, staff, and administrators of this great institution of higher learning on the occasion of its bicentennial anniversary; and

(3) offers best wishes for the continued success of Bowdoin College in the future.

Mr. MITCHELL. Mr. President, I rise today to offer a sense-of-the-Senate resolution commemorating the bicentennial of Bowdoin College. I am pleased to join my colleague from Maine and fellow alumnus of the college, Senator COHEN, in honoring the students, faculty, staff and alumni of this esteemed institution of higher learning.

From its founding in 1794 as the first college in the territory that would later become the State of Maine, to its present status as one of the finest liberal arts colleges in the United States, Bowdoin College has had an important role in educating the young people of Maine and the rest of the Nation. Bowdoin College first began classes in 1802 with one building and eight students. The college now educates approximately 1,430 students from across the national and several foreign countries on a campus that houses more than 50 buildings.

In his 1802 convocation speech at the opening of the college, Bowdoin's first president, the Reverend Joseph McKeen, stated that "literary institutions are founded and endowed for the common good and not for the private advantage of those who resort to them for education." I am proud that the college remains committed to that philosophy today, as indicated by the large number of Bowdoin alumni who choose careers in public service, medicine, and teaching.

Bowdoin's alumni have contributed to the advancement of the Nation in a number of areas. Distinguished alumni of the college include President Franklin Pierce, an 1824 graduate of the college, 1853 graduate Melville Weston Fuller, who served as Chief Justice of the U.S. Supreme Court, literary greats Nathaniel Hawthorne and Henry Wadsworth Longfellow, both 1825 graduates, and Civil War hero and Governor of Maine, Joshua Chamberlain, who left his teaching position at the college to join the Union Army and who was instrumental in the Union victory at Gettysburg.

For 200 years, Bowdoin College has been a valuable asset to both the State of Maine and the Nation. I congratulate the college on its many years of service to the country, and I wish it continued success in the future.

I simply want to add that it is a matter of great honor and personal pride for me to be submitting this resolution. I am a graduate of Bowdoin College, in Brunswick, ME, and I will forever be indebted to that institution for the opportunities that it gave me.

I was a young man, 16 years old, when I graduated from high school, had no means to go on to college, and the administration of this great and historic institution took me in, helped me get through, and I will forever be grateful.

So it is a great honor for me to have this resolution adopted.

Mr. COHEN. Mr. President, I rise today to join my colleague from Maine in paying tribute to one of our Nation's finest institutions of higher learning, not to mention my and Senator MITCHELL'S alma mater: Bowdoin College.

Bowdoin College was established in 1794, the first college in what was then the District of Maine, some 26 years before Maine attained statehood. Since 1802, it has been educating students from Maine, the Nation, and around the world on a principle known as the common good. This year marks the bicentennial of Bowdoin and the school has been honoring throughout the year its many famous alumni. I wish to take a moment to describe what Bowdoin has meant to me and to the people of Maine.

Several years ago a national survey was taken of college students. Three-fourths of those surveyed revealed that their principal reason for pursuing a college education was to achieve financial success rather than to develop a philosophy of life. I find that extremely disturbing. While I recognize the desire or need to acquire financial security, the aim of an education must always remain moral and not material. A society that measures a person's value by the size of a bank account or possessions is a society that ultimately will decline and fall.

But Bowdoin College is a place where self-interest and mindless greed have never found a home. It is an institution where developing a philosophy of life is the foundation, where the broad spectrum of liberal arts is used to define and shape future generations.

I recall my first days as a student at Bowdoin, when I was uncertain of what my future held and only vaguely aware of Bowdoin's history and reputation. On registration day, I was given a booklet containing the words of the seventh president of the college, William DeWitt Hyde. The pamphlet contained "The Offer of the College," which reads in part:

To be at home in all lands and all ages . . .
To carry the keys of the world's library in your pocket . . .
To make hosts of friends . . . who are to be leaders in all walks of life;
To lose yourself in generous enthusiasms and cooperate with others for common ends . . .
This is the offer of the College for the best four years of your life.

I did not know exactly what those words meant in my first days as a Bowdoin student, but over the years their meaning has become clear.

Bowdoin College is a place where young men and women learn to translate thoughts into action, so that as adults they can dedicate themselves to serving the common interest. And Bowdoin students find myriad ways to do so, whether as President of the United States—Franklin Pierce of the class of 1824—or in some way not quite so noticeable.

Bowdoin College is about exploring uncharted territories. Adm. Robert E. Peary of the class of 1877 interpreted that one way when he became the first man to reach the North Pole; Dr. Cornelius Rhoads of the class of 1920 another as he performed his pioneering research on cancer.

Bowdoin College is about testing oneself against the best, and discovering the limits of human performance. Joan Benoit Samuelson of the class of 1979 did when she won the gold medal in the first women's Olympic marathon in 1984.

Bowdoin College is about transforming wisdom into fairness, as Supreme Court Justices Melville Weston Fuller of the class of 1853 and Harold H. Burton of the class of 1909 did.

Bowdoin College is about the beauty and power of language, as displayed by Nathaniel Hawthorne and Henry Wadsworth Longfellow, both members of the class of 1825.

Bowdoin College is about standing up for the freedoms that America was founded upon, as Joshua Lawrence Chamberlain of the class of 1852 did when leading his troops to victory in the Civil War and later as the Governor of Maine.

Shortly before his death, Robert F. Kennedy said,

Few will have the greatness to bend history itself, but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of a generation . . . each time a person stands up for an ideal, or acts to improve the lot of others, or strikes out against an injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest wall of oppression and resistance.

Bowdoin College is committed to sending forth more than its share of ripples and together they have built a tidal wave for a better society. May it continue to do so ad infinitum.

I congratulate the students, faculty, staff, administrators, and my fellow alumni on this occasion of the bicentennial of Bowdoin College.

FOOD STAMP IMPROVEMENTS ACT OF 1994

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1926, a bill relating to food stamps for Indians, introduced earlier today by Senators PRESSLER and LEAHY; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; that statements by Senators PRESSLER and LEAHY and a Leahy-Inouye colloquy appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I am pleased to rise in support of the Food Stamp Improvements Act of 1994 introduced by Senator PRESSLER. This legislation culminates months of work by Senator PRESSLER, the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Indian Affairs.

This legislation has two principal components. Title I of the bill addresses some aspects of the administration of the Food Stamp Program on Indian reservations. Title II addresses a problem regarding the definition of eligible retail food stores in the Food Stamp Program.

As Members of this body are well aware, many households living on reservations are among the poorest in the Nation. Unemployment on some reservations exceeds 50 percent. Many reservations also include large remote areas with little access to paved roads, telephones, or mail service. These factors can make it difficult for some households to participate in the Food Stamp Program.

Low-income households on reservations have the choice of participating in the Food Stamp Program or receiving Government commodities under the Food Distribution Program in Indian reservations. Reports and testimony we have received show that many native American households believe that they can obtain more nutritious and appealing foods with food stamps. They continue to receive commodities instead of food stamps because of administrative barriers in the Food Stamp Program.

With these concerns in mind, we inserted two provisions in the 1990 farm bill to help households on reservations. Before these provisions could be implemented, we became aware that some State food stamp administrators had concerns about these provisions. Congress delayed the implementation of the 1990 amendments and sought to learn more about the problems facing households and food stamp administrators on reservations.

A joint hearing of the Senate Committee on Indian Affairs and the Senate Committee on Agriculture, Nutrition, and Forestry in May last year sought some answers to these problems. After examining the great volume of information we received and consulting closely with members of the Agriculture Committee and several Senators from States with large reservations, we believe we have arrived at a good compromise.

This legislation modifies each of the 1990 provisions to ease burdens on State administrators without sacrificing the protections for households on reservations that Congress sought to achieve in 1990.

With regard to monthly reporting, this legislation would prohibit any State which does not currently require monthly reporting on reservations from doing so at any time in the future. In other words, States that have already ended monthly reporting would continue to be bound by the 1990 legislation. States that still routinely require households on reservations to complete monthly reports could continue to do so subject to all current safeguards and a few new ones.

All monthly reporting households on reservations would be entitled to 2-year certification periods unless USDA approved a specific State request to provide shorter certification periods for some class of households. In deciding whether to grant requested waivers, USDA should consider both the reasons the State desires to implement a shorter certification period and the burden that households on the particular reservation would face in going through the recertification process more often.

Households that have difficulty getting complete monthly reports into the State agency under current deadlines would receive relief. The State could not take any action against a household for failing to submit a complete monthly report form until after the end of the month following the month the report was first due.

Households would receive notices, as they do under current law, when the State received no report, or an incomplete report, by the State's normal reporting deadline. But instead of suspending the household's food stamps,

this notice would merely advise the household what it needed to do to comply and that further delays could result in a suspension of benefits.

Household food stamps could only be suspended for failure to report if the household failed to submit a complete report by the end of the month following the month the report was due. The purpose of this grace period is to provide ample opportunity to resolve misunderstandings and ensure that households do not suffer when their reports are lost in the mail, when they unintentionally submit incomplete reports, or when households have difficulty getting to a location where they can mail their reports.

Nothing in this legislation, of course, would prevent States from taking action based on eligibility factors contained in monthly report forms when they arrive. The grace period is only to prevent interruptions in benefits for administrative, as opposed to substantive, reasons. It also should be noted that the household can have its benefits suspended if it refuses to supplement an incomplete report form by the end of the grace period. Households that do not submit reports by the end of the grace period would have their benefits suspended. Households submitting complete monthly reports by the end of the month following the grace period would have their benefits reinstated as long as they remain eligible for the program.

Additionally, this legislation anticipates regulations from the Department of Agriculture which will ensure that a State will not be adversely affected in regard to its quality control efforts related to those households whose monthly reports are not submitted until a month after the report is due. It would be unfair to States for them to be penalized regarding this special continuation of benefit provision. I intend to work closely with the Department on these regulations to make sure the rules are designed in a manner that is fair to States and to make sure States are able to document any issues that may arise due to this policy.

Of course, States would continue to be bound by existing statutory and regulatory protections, including those for the elderly and disabled and those with physical or mental handicaps or limited literacy in English.

On the question of staggered issuance, we replaced the blanket requirement that all issuances be staggered on reservations for 1 month with a more flexible system. States would only be required to stagger on reservations if requested to do so by a tribe, and could not be required to stagger issuances over more than 15 days. A State could decide to stagger issuances on its own for the entire month. Existing requirements concerning mail issuances would be continued.

Finally, title I provides for an extensive study of the feasibility of having tribes administer the Food Stamp Program on their own reservations. A limited option for tribal administration was included in the Food Stamp Act of 1977, but some tribes have complained that it is not workable. The program has changed in many ways over the last 17 years. We are open to considering changes in the rules on tribal administration of the program but feel the need of information on a range of significant issues before deciding on the most appropriate course of action. The deadline for this report ensures that Congress will have ample time to develop implementing legislation to be included in the 1995 farm bill.

Title II of this bill would revise the Food Stamp Act's definition of retail food store and establish a definition for staple foods as requested by USDA.

The changes in title II are contained in a bill passed by the other body and are supported by the administration. The Senate version adds additional antifraud provisions.

The title II changes help maintain access to a wide variety of nutritious foods to food stamp recipients by continuing the participation of certain retail food stores. The administration has recommended the changes necessary to allow the continued participation of the retail concerns.

Mr. PRESSLER. Mr. President, I am pleased to offer today legislation that will resolve several long-standing problems involving the Food Stamp Program. I want to thank my colleague, Senator LEAHY, chairman of the Committee on Agriculture, Nutrition, and Forestry for cosponsoring this legislation. I also want to thank Senators LEAHY, LUGAR, INOUYE, and MCCAIN for their assistance in bringing this bill to the floor.

The first issue is the method and timetable for issuing food stamp benefits on Indian reservations. Both administrators of the Food Stamp Program and recipients living on reservations have questioned whether existing food stamp rules provide the most accessible and efficient means of providing food stamp benefits to reservation residents. In the 1990 farm bill, legislation was passed which attempted to resolve these concerns. Because of the legislation's administrative complexity, at my urging Congress has twice postponed its implementation pending agreement on a better alternative.

After a joint committee hearing and many hours of dedicated review and discussion, I am pleased the Senate Committees on Agriculture, Nutrition, and Forestry, and Indian Affairs, food stamp administrators, and native American representatives have reached a compromise on new legislation.

This legislation allows States using a monthly reporting method to track household changes to continue to use this system for reservation households, but only if more flexible compliance requirements are instituted. States will be required to provide uninterrupted and full monthly benefits to households as long as recipients submit complete reports within a month of the due date. Further, monthly reporting households on Indian reservations will generally be required to come in to food stamp offices for in-person interviews only once every 2 years, thus reducing the need to find expensive transportation to these offices.

The bill provides another option for food stamp issuance, should a tribe so choose. If a tribe requests a State to stagger issuance of benefits—that is, send them out over multiple days each month, rather than all on the same day—State administrators must do so upon request and stagger the benefits over at least 15 days.

Finally, my legislation requires the General Accounting Office to study the feasibility of having interested tribal governments administer the Food Stamp Program for recipients living on reservation lands. I am pleased we are reviewing this issue.

Title II of my legislation, similar to H.R. 3436 which passed the other body, changes the definition of retail stores to ensure continued participation by certain retail food stores. The new language will also enable the Department of Agriculture to remove from participation party stores and certain other types of stores that are not true food concerns. Title II also contains provisions designed to strengthen the U.S. Department of Agriculture's ability to combat fraud in the Food Stamp Program.

Mr. President, I would like to thank the staff of both committees—in particular, Eric Eberhand and Rob Taylor of Senator MCCAIN's staff, Patricia Zell and Patricia Trudell Gordon of Senator INOUYE's staff on the Committee on Indian Affairs; Ed Barron and Doug O'Brien of Senator LEAHY's staff and Stacy Hoffhaus of Senator LUGAR's staff on the Committee on Agriculture, Nutrition, and Forestry. I would also extend my special thanks to Julie Osnes, president of the State Food Stamp Directors Association and a 15-year veteran as the Food Stamp Program Director in my home State of South Dakota, and C. Larry Goolsby from the American Public Welfare Association.

Mr. President, I understand this has been cleared on both sides of the aisle, and therefore, urge its immediate adoption. It is my hope the House of Representatives will act expeditiously on this legislation and send it to the President for signature immediately.

Mr. INOUYE. Mr. President, I rise to ask if the distinguished chairman of the Committee on Agriculture, Nutrition, and Forestry, Senator LEAHY, would yield for some questions regarding the Food Stamp Program Improvements Act of 1994?

Mr. LEAHY. I would be pleased to yield to my good friend, the chairman of the Committee on Indian Affairs, for any questions he may have on this legislation. Our two committees have worked together to bring this legislation to the full Senate and I appreciate Chairman INOUYE's assistance in shaping a compromise which is acceptable to both committees.

Mr. INOUYE. I thank the chairman of the Committee on Agriculture, Nutrition, and Forestry. I also appreciate the excellent working relationship which has been established between our two committees and the willingness of the Senator from Vermont to work with the members of the Committee on Indian Affairs on issues of concern to Indian tribal governments.

With regard to the legislation which is now before us, I would like to direct Chairman LEAHY's attention to the language in what will become the new section 6(c)(1)(C)(iv) of the Food Stamp Act. This new provision of the act will require a State to use a 2-year period for certification of food stamp recipients residing on reservations if the State requires monthly reporting for those households. This provision also authorizes the Secretary of Agriculture to allow for a shorter certification period if a State demonstrates just cause to the Secretary. It is my understanding that the intent of the Committee on Agriculture is that the Secretary would only exercise his discretion to allow a shorter period after he has consulted with the appropriate tribal government and when extraordinary circumstances exist. Such circumstances would include widespread fraud, a substantial change in circumstances on a reservation which results in wide fluctuations in income for large numbers of food stamp recipients or similar changes which require more frequent certification to protect the financial integrity of the Food Stamp Program and to maintain the lowest practicable error rates. I ask the chairman of the Agriculture Committee if my understanding is correct?

Mr. LEAHY. The Senator is correct. This provision only applies in the situation where a State is requiring monthly reports from food stamp recipients. With monthly reporting, frequent certification should not be necessary and adequate safeguards should be in place to ensure the financial integrity of the Food Stamp Program. Certification can be a time consuming and burdensome process and should not be required where adequate safeguards are in place in the form of monthly reporting. We would expect the Secretary to very carefully scrutinize any request to shorten the certification period and to determine that a shorter period is both necessary and that it will correct a specific problem which cannot be solved through monthly reporting. I would add that the committee expects the Department of Agriculture to provide adequate assurance in regulations that the provisions relating to monthly reporting will not adversely affect the quality control error rates of the States as it relates to this provision. And of course, nothing in this bill should be construed as limiting a State's ability to reclaim overissued benefits or issue additional benefits for under issuances as determined by a monthly report. I would like to add that in reference to the term "report" in this legislation, the term means a complete report. Is this also the understanding of the distinguished Chairman?

Mr. INOUYE. I thank the chairman. Yes, that is my understanding of this legislation. I have another question as it relates to the provisions in this legislation which require the General Accounting Office to conduct a study of the feasibility and desirability of providing Indian tribal governments with the authority to administer the Food Stamp Program on the reservations. As the Senator from Vermont knows, the Food Stamp Program is one of the very few Federal programs which Indian tribal governments do not directly administer. It has been Federal policy for the last 20 years to encourage Indian tribal governments to enter into contracts to assume the administration of most Federal programs. Indeed, current food stamp law permits the Secretary to contract with an Indian tribal government to administer the program in certain circumstances. Some representatives of Indian tribal governments have questioned the need for the study provided for in this legislation and whether the Senate will actually consider this issue further after the study is completed. Such skepticism is certainly understandable in light of the history of prior studies of Federal/tribal relations. It is my understanding that the Committee on Agriculture fully expects that this study will provide the information necessary for a thorough analysis of the barriers to administration of the Food Stamp Program by tribal governments and suggest appropriate ways to remove those barriers. Is my understanding correct?

Mr. LEAHY. The Senator is correct. Under current law, an Indian tribal government must show that a State has failed to properly administer the program before the Secretary can enter into a contract with a tribal government. Apparently this has never been done. Even if it had been done, we question the soundness of a policy which requires an Indian tribal government to prove that a State has failed at something before the tribal government has an opportunity to administer the program. However, we do believe some caution is required in this situation. We lack reliable information on the administrative costs involved. We need to carefully assess the issue of how penalties for excessive error rates would apply. We need to consider the criteria, if any, which the Secretary should use to determine capability to administer the program. These are a few of the issues which the Committee on Agriculture would like to examine. However, I want to assure the chairman of the Committee on Indian Affairs that the Committee on Agriculture fully intends to examine this issue as part of the 1995 farm bill and to do so mindful of Federal policies of self-determination and self-governance by Indian Affairs as we consider this issue and any legislation which may arise to address it.

Mr. INOUYE. Again, I thank the chairman. My final question relates to whether the chairman of the Committee on Agriculture would be willing to join with me to request that the Office of Technology Assessment also examine the barriers to administration of the Food Stamp Program by Indian trial governments? Having an additional perspective should be helpful to both of our committees.

Mr. LEAHY. I thank my friend for that suggestion. I would be pleased to join the chairman of Committee on Indian Affairs in making such a request to the Office of Technology Assessment.

Mr. INOUYE. I thank my friend and I look forward to continuing our work together to address these issues which are of such great concern to Indian tribal governments and the citizens they serve.

Mr. MCCONNELL. Mr. President, around 213,000 retail stores nationwide are authorized to redeem food stamp coupons issued under the Food Stamp Program, a program which hands out over $20 billion in Federal benefits to 26 million Americans a year. Mr. President, those numbers are staggering, and demonstrate the enormity of our Nation's largest food assistance program. I have spoken on this floor in the past about concerns with the fraud and trafficking abuses that occur within this program, and it is with these interests in mind that I rise today to address certain provisions of the Food Stamp Program Improvements Act of 1994.

I want to thank my colleagues in both the House and Senate, including Senators PRESSLER and LEAHY and Congressmen ROBERTS and STENHOLM, for including a key provision from my bill, the Food Stamp Anti-Fraud Act, that addresses the use of information provided to USDA by retail food stores. Currently, the Department of Agriculture is hampered by restrictions in law that do not allow them to fully investigate suspected fraud and trafficking abuses in the Food Stamp Program. Section 203 of the Food Stamp Program Improvements Act will improve the ability of USDA to pursue suspected cases of abuse by expanding the use of

information provided by retailers to federal and state law enforcement agencies. This provision will go far in enhancing our government's ability to weed out fraudulent activities by retail stores in the Food Stamp Program.

The Food Stamp Program Improvements Act also changes the definition of a retail food store and requires the Department to periodically provide information to the stores on eligibility criteria. Mr. President, the management of the retail food stores participating in the program is a critical element in the Department's overall efforts to fight fraud and maintain the integrity of the Food Stamp Program.

I asked my colleagues to include in this bill a request that the Secretary monitor and report back to Congress on the impact that these changes have on the Food Stamp Program, and I appreciate their agreement to include this provision. By asking the Department to inform us of the stores coming on or leaving the program, and by asking the Department to monitor and assess the adequacy of the information they are providing to both field staff and retail stores, it is my hope that we will be able to evaluate the ramifications that the changes brought about by this bill have on the Food Stamp Program.

Previous audits by USDA's Office of Inspector General indicate that ineligible stores participate in the program on a widespread basis, that the Food and Nutrition Service provided conflicting information to stores on eligibility criteria, and that stores often erred in their eligibility determinations. We have attempted to address some of these concerns through the Food Stamp Program Improvements Act, and it is my sincere hope that these directives will tighten up the oversight of retail food stores. I look forward to continuing to work with my colleagues on efforts to reduce the fraud in our nation's largest food assistance program.

So the bill (S. 1926) was deemed read three times and passed, as follows.

S. 1926

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Food Stamp Program Improvements Act of 1994".

TITLE I—REPORTING AND STAGGERED ISSUANCE FOR HOUSEHOLDS ON RESERVATIONS

SEC. 101. BUDGETING AND MONTHLY REPORTING ON RESERVATIONS.

(a) IN GENERAL.—Section 6(c)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(1)) is amended—

(1) in subparagraph (A)—

(A) by striking clause (ii); and

(B) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively; and

(2) by adding at the end the following new subparagraph:

"(C) A State agency may require periodic reporting on a monthly basis by households residing on a reservation only if—

"(i) the State agency reinstates benefits, without requiring a new application, for any household residing on a reservation that submits a report not later than 1 month after the end of the month in which benefits would otherwise be provided;

"(ii) the State agency does not delay, reduce, suspend, or terminate the allotment of a household that submits a report not later than 1 month after the end of the month in which the report is due;

"(iii) on the date of enactment of this subparagraph, the State agency requires households residing on a reservation to file periodic reports on a monthly basis; and

"(iv) the certification period for households residing on a reservation that are required to file periodic reports on a monthly basis is 2 years, unless the State demonstrates just cause to the Secretary for a shorter certification period.".

(b) CONFORMING AMENDMENTS.—

(1) The second sentence of section 3(c) of such Act (7 U.S.C. 2012(c)) is amended by striking "For" and inserting "Except as provided in section 6(c)(1)(C), for".

(2) Section 5(f)(2)(C) of such Act (7 U.S.C. 2014(f)(2)(C)) is amended by striking "clauses (i), (ii), (iii), and (iv)" and inserting "clauses (i), (ii), and (iii)".

SEC. 102. STAGGERED ISSUANCES ON RESERVATIONS.

Section 7(h)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2016(h)(1)) is amended by striking the second sentence and inserting the following new sentence: "Upon the request of the tribal organization that exercises governmental jurisdiction over the reservation, the State agency shall stagger the issuance of benefits for eligible households located on reservations for at least 15 days of a month.".

SEC. 103. GAO STUDY AND REPORT ON ADMINISTRATION OF FOOD STAMP PROGRAM BY TRIBAL ORGANIZATIONS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the feasibility and desirability of—

(1) increasing the opportunity for a tribal organization of an Indian tribe to administer the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) in connection with members of the tribe by—

(A) modifying the requirements established under sections 3(n)(2) and 11(d) of such Act (7 U.S.C. 2012(n)(2) and 2020(d));

(B) modifying or eliminating the cost-sharing requirements established for the tribal organization under section 16(a) of such Act (7 U.S.C. 2025); and

(C) taking such other actions as the Comptroller General considers appropriate; and

(2) permitting the tribal organization to establish reasonable and appropriate requirements with respect to issuance, reporting, and certification requirements under the food stamp program for members of the tribe.

(b) REPORT.—Not later than December 1, 1994, the Comptroller General shall report the results of the study required under subsection (a) to the Committee on Agriculture, and the Subcommittee on Native American Affairs of the Committee on Natural Resources, of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry, and the Committee on Indian Affairs, of the Senate, so that the results of the study may be considered by the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate during the reauthorization of the food stamp program during 1995.

SEC. 104. CONFORMING AMENDMENTS.

(a) Section 908 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 7 U.S.C. 2015 note) is repealed.

(b) Section 6(c)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(4)) is amended by striking "Any" and inserting "Except as provided in paragraph (1)(C), any".

TITLE II—ACCESS TO RETAIL FOOD STORES BY FOOD STAMP HOUSEHOLDS

SEC. 201. FOOD STAMP ACT DEFINITIONS.

Section 3 of the Food Stamp Act of 1977 (7 U.S.C. 2012) is amended—

(1) in subsection (k)—

(A) by striking "means (1) an establishment" and all that follows through "spices, (2) an establishment" and inserting the following: "means—

"(1) an establishment or house-to-house trade route that sells food for home preparation and consumption and—

"(A) offers for sale, on a continuous basis, a variety of foods in each of the 4 categories of staple foods specified in subsection (u)(1), including perishable foods in at least 2 of the categories; or

"(B) has over 50 percent of the total sales of the establishment or route in staple foods, as determined by visual inspection, sales records, purchase records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry;

"(2) an establishment";

(B) by striking "section, (3) a store" and inserting the following: "section;

"(3) a store"; and

(C) by striking "section, and (4) any private" and inserting the following: "section; and

"(4) any private"; and

(2) by adding at the end the following new subsection:

"(u)(1) Except as provided in paragraph (2), 'staple foods' means foods (as defined in subsection (g)) in the following categories:

"(A) Meat, poultry, or fish.

"(B) Bread or cereals.

"(C) Vegetables or fruits.

"(D) Dairy products.

"(2) 'Staple foods' do not include accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices.".

SEC. 202. PERIODIC NOTICE.

Paragraph (2) of section 9(a) of the Food Stamp Act of 1977 (7 U.S.C. 2018(a)(2)) is amended to read as follows:

"(2) The Secretary shall issue regulations providing for—

"(A) the periodic reauthorization of retail food stores and wholesale food concerns; and

"(B) periodic notice to participating retail food stores and wholesale food concerns of the definitions of 'retail food store', 'staple foods', 'eligible foods', and 'perishable foods'.".

SEC. 203. USE AND DISCLOSURE OF INFORMATION PROVIDED BY RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS.

Section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) is amended—

(1) in the second sentence, by inserting after "disclosed to and used by" the following: "Federal law enforcement and investigative agencies and law enforcement and investigative agencies of a State government for the purposes of administering or enforcing this Act or any other Federal or State law and the regulations issued under this Act or such law, and";

(2) by inserting after the second sentence the following new sentence: "Any person who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by Federal law (including a regulation) any information obtained under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both."; and

(3) in the last sentence, by striking "Such purposes shall not exclude" and inserting the following: "The regulations shall establish the criteria to be used by the Secretary to determine whether the information is needed. The regulations shall not prohibit".

SEC. 204. DEMONSTRATION PROJECTS TESTING ACTIVITIES DIRECTED AT TRAFFICKING IN COUPONS.

Section 17 of the Food Stamp Act of 1977 (7 U.S.C. 2026) is amended by adding at the end the following new subsection:

"(l) The Secretary shall use up to $4,000,000 of the funds provided in advance in appropriations Acts for projects authorized by this section to conduct demonstration projects in which State or local food stamp agencies test innovative ideas for working with State or local law enforcement agencies to investigate and prosecute coupon trafficking.".

SEC. 205. CONTINUING ELIGIBILITY.

An establishment or house-to-house trade route that is otherwise authorized to accept and redeem coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) on the day before the date of enactment of this Act shall be considered to meet the definition of "retail food store" in section 3(k) of such Act (7 U.S.C. 2012(k)) (as amended by section 201) until the earlier of—

(1) the periodic reauthorization of the establishment or route; or

(2) such time as the eligibility of the establishment or route for continued participation in the food stamp program is evaluated for any reason.

SEC. 206. REPORT ON IMPACT ON RETAIL FOOD STORES.

Not later than 18 months after the date of enactment of this Act, the Secretary of Agriculture shall prepare and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the impact of the amendments made by sections 201 and 202 on the involvement of retail food stores in the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), including a description of—

(1) the numbers and types of stores that were newly authorized to participate in the food stamp program after implementation of the amendments;

(2) the numbers and types of stores that were withdrawn from the food stamp program after implementation of the amendments;

(3) the procedures used by the Secretary, and the adequacy of the procedures used, to determine the eligibility of stores to participate in the food stamp program and to authorize and reauthorize the stores to participate in the food stamp program;

(4) the adequacy of the guidance provided by the Secretary to retail food stores concerning—

(A) the definitions of 'retail food store', 'staple foods', 'eligible foods', and 'perishable foods' for purposes of the food stamp program; and

(B) eligibility criteria for stores to participate in the food stamp program; and

(5) an assessment of whether the amendment to the definition of "retail food store" under section 3(k) of such Act (as amended by section 201(1)) has had an adverse effect on the integrity of the food stamp program.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that Senator BOND be recognized for 3 minutes; that upon the conclusion of his remarks, Senator BYRD be recognized to address the Senate, and that upon the conclusion of Senator BYRD's remarks the Senate stand in recess as ordered.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank the Chair.

Mr. President, I express my appreciation to the distinguished majority leader and to our distinguished President pro tempore. I will not be long.

WHITEWATER

Mr. BOND. Mr. President, I heard the majority leader raise a number of questions just a few moments ago, and I thought it might be appropriate for the record just to respond.

First, he commented on the lack of policies of the Republicans. Granted, we do not have a President to set forth policies, but many of us in this body are working very hard on our side and in cooperation with our colleagues on the other side of the aisle on health care, on a wide range of issues. We do have health care plans. He asked if we had an economic plan. I believe the economy is benefiting now from the economic plans put in place in the 1980's and the early 1990's by Presidents Reagan and Bush. The long-term structural adjustments are leading to the economic recoveries we have now.

Mr. President, with respect to the issue of Whitewater, I was delighted to hear the majority leader say that there will be congressional hearings. I was concerned that he suggested the questions which are being raised are being raised now only for political purposes.

I just want to call the attention of my colleagues to the fact that there was a special investigation set up that was focusing on activities in Arkansas, and then on the tragic death of a top White House aide. But until we had a banking hearing last week in which I and a number of my colleagues asked questions, we had not raised the issue of what has now become a major concern.

In that committee meeting in banking, I asked Mr. Altman how the White House was notified of the referral. Mr. Altman said:

They were not notified by the RTC, to the best of my knowledge.

I replied:

Nobody in your agency to your knowledge advised the White House staff that this was going to be a major, this could be a major source of concern?

Mr. Altman replied:

Not to my knowledge.

My question was followed by further inquiries by Senators D'AMATO, DOMENICI, and GRAMM. As a result of that, more and more information came out about White House meetings involving the general counsel to the Treasury and the counsel to the White House.

Since that time, 10 subpoenas have been issued. The White House counsel has resigned. I believe that we have attempted, in raising these questions, to exercise our responsibility of congressional oversight. I believe we can continue and we should continue to do so without granting immunity, without taking any steps that would interfere with the internal criminal investigations.

I believe we can do that, and I urge that we be permitted to go ahead with a full-scale inquiry so that we can raise the cloud that has descended over this town and this administration.

The special counsel will seek to find out whether there are criminal matters which should be pursued. But we in Congress have a much broader responsibility to see if the ethical standards of the high officials in the executive branch have been observed, and to determine whether there has been a full and accurate accounting; and whether we in Congress and the American people ought to know more about the responses of the executive branch to the investigation.

This to me is a vitally important matter of ongoing congressional oversight. I hope that we will be able to move forward sooner rather than later to pursue that responsibility.

Mr. President, I thank the Chair.

I thank the distinguished President pro tempore.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia [Mr. BYRD].

THE "VICTIM" OF A HAPPY CONSPIRACY

Mr. BYRD. Mr. President, for many Americans, Washington is a nucleus of Byzantine plots and national political legerdemain, of scenarios hatched in smoke-filled rooms and of sinister conspiracies nightmared to life behind closed doors.

Be that as it may, yesterday, I found myself the subject of a conspiracy, of whispered intrigues, and of hidden agenda that reached to the very spires of power in the United States Senate—a conspiracy so intricate that its tentacles reached out to embrace some of my closest friends and even some of the most loyal members of my own staff.

So I stand here to say that I am shocked—shocked. Yes, Mr. President,

shocked, that such conspiring could have taken place under my very nose and involve so many high-placed personages without my ever catching a whiff of that conspiracy before the fact. It is indeed a serious matter.

However, I add, Mr. President, that seldom have I been so touched and moved by any such conspiracy in my life, and I sincerely thank all of those who planned yesterday's special luncheon honoring me for 35 years of continuous service in the United States Senate, and all of those who joined in honoring me.

It was 35 years ago, Mr. President, that the first two Alaska Senators were sworn in on the same date as was I, in January 1959. And in that year, Hawaii's first two Senators' terms began on August 21, 1959. So, it was in commemoration of those great events, the swearing in of those four Senators from those two States that yesterday's luncheon was held. And Senators INOUYE and STEVENS, especially, were kind enough to include me in the honors. To Senator DOLE, Senator MITCHELL, Senator HATFIELD, Senator ROCKEFELLER, Vice President GORE, and so many others—I assure all involved, Mr. President, that I was sincerely and genuinely moved by the events of yesterday, and that I shall never forget the graciousness and the thoughtfulness of which I was the beneficiary at Thursday's celebration.

Nor shall I ever forget the sly fashion in which the Secretary of the Senate, Walter J. Stewart lured me into their net—telling me in my office, as I was eating a bologna sandwich, that a British delegation from those beautiful isles adjoining the English channel and the North Sea were upstairs and would be happy to visit with me, and that they wanted to hear me discourse on the United States Constitution and the British Constitution.

Thus, armed with the United States Constitution, I left my office to share what I thought would be a half hour with our British partners, and our British cousins, I might add. When I entered the luncheon room, the Mansfield Room, and everybody stood up and applauded, I thought the applause was for our phantom British visitors, who, I thought, were entering the room behind me. So real had Joe Stewart's act been, and so taken in was I, that, at the applause, I looked around to welcome our guests.

Senator INOUYE and Senator STEVENS hosted the luncheon, and I deeply appreciate the efforts that Senator INOUYE and STEVENS exerted in planning and executing this beautiful affair. It was a delightful event, a very delectable and enjoyable luncheon on yesterday.

I especially thank Senator DOLE and Senator MITCHELL for their roles in honoring me. I have stood in both of their shoes, and I know the difficulty of the task of being either the minority leader or the majority leader. I shall long remember both leaders being present and their eloquent words in my behalf.

I thank Senator ROCKEFELLER, my distinguished colleague from West Virginia, and Senator HATFIELD, my colleague and distinguished ranking member on the Appropriations Committee. Again and again, my responsibilities throw me together with these exemplary gentlemen—and I intend that word "gentlemen" in all of its most laudatory and classic connotations—and I treasure the associations that I have enjoyed with these two Senators in our work together here in the Senate and in our friendships, one with the other.

Mr. President, I make no pretense of nonchalance or detachment with regard to the United States Senate, or to my privilege of serving in this institution.

In the season of mankind's tenure here on Earth, and in the brief centuries of the recorded history of that tenure, perhaps into the hands of no other institution—the Senate of Republican Rome included—into the hands of no other institution has so much power and trust been delivered than has been delivered into the hands of the United States Senate. No, not the Roman Senate, although that, too, was a unique Senate—one of the two greatest Senates in all history—and not the British House of Commons, not the French Chamber of Deputies, not the Russian Imperial Duma, not the German Bundestag, not the Japanese Diet. The United States Senate is, as far as I am concerned, sui generis among all legislative bodies.

Out of all of the millions upon millions of men and women who have been and are privileged to call themselves Americans, only 1,815 men and women, cumulatively, have been chosen to bear the title "United States Senator." As surely as I stand here in living flesh and blood, I discern in the creation of the Senate and in the bestowal of the title "United States Senator," the hand of Destiny—a Destiny that promises for this great Nation an incomparable role in human history; a Destiny that purposes for this Senate a paramount role in charting our ship of state through the shoals and rapids of a sometimes capricious and purpose-destroying course of events.

For those reasons, if none other, I am a proud advocate of the constitutional prerogatives of the United States Senate against all those who might, in their sometimes invincible ignorance, reduce the Senate to a pitiful creation, far less than the giants of the Constitutional Convention envisioned this Senate to be.

If all else fails, Mr. President, let the United States Senate rise to her full stature and do battle. If all else fails, let the United States Senate gird herself with the majesty of the intellects of Madison and Washington and Franklin and Hamilton, and those others on whose shoulders this Republic rests. If all else fails, let the United States Senate play the unfettered role embodied for her in the Constitution, and the promise of America, the purpose of America, and the dream of America will not be lost.

That, Mr. President, is my faith in History's and Destiny's having called the United States Senate into being.

And that, Mr. President, is, in part, my interpretation of my own humble participation as one among equals in welding the powers, duties, and servanthood that the Constitution bestows on all of us who are set aside by our fellow citizens to be called "United States Senator."

Therefore, Mr. President, I have discerned, and I continue to discern—and I have done through my 35 years in the Senate—my being a Senator more in terms of duty and responsibility—patriotic responsibility—in behalf of the people of the United States and the citizens of West Virginia than in any misbegotten sense of pride or haughtiness of position.

But, yesterday, I experienced again, as I have experienced so many times over roughly three-and-one-half decades, the incomparable friendship and comradeship that we share as Senators. I shall carry into eternity my gratitude for the quality of the association and mutual affection that is ours uniquely here in the United States Senate.

I yield the floor.

ORDERS FOR TUESDAY, MARCH 15, 1994

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. Tuesday, March 15; that following the prayer, the Journal of proceedings be approved to date and the time for the two leaders reserved for their use later in the day; that the Senate then resume consideration of S. 4, with the time until 10 a.m. equally controlled between Senator HOLLINGS and Senator DANFORTH, or their designees; that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:30 p.m. in order to accommodate the respective party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL MARCH 15, 1994, AT 9 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9 a.m., Tuesday, March 15.

Thereupon, the Senate, at 5:39 p.m., recessed until Tuesday, March 15, 1994, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate March 11, 1994:

DEPARTMENT OF DEFENSE

CLARK G. FIESTER, OF CALIFORNIA, TO BE AN ASSISTANT SECRETARY OF THE AIR FORCE, VICE G. KIM WINCUP, RESIGNED.

NATIONAL COUNCIL ON DISABILITY

KATE PEW WOLTERS, OF MICHIGAN, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 1995, VICE ALVIS KENT WALDREP, JR., TERM EXPIRED.

IN THE ARMY

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, U.S.C. SECTIONS 593(A) AND 3385:

ARMY PROMOTION LIST

To be colonel

WILLIAM M. CASEY, xxx-xx-x...
THOMAS G. EGAN, xxx-xx-x...
BRUCE R. JONES, xxx-xx-x...
DONALD E. KOZACEK, xxx-xx-x...
RAMON P. LOPEZ, xxx-xx-x...
WILFREDO MARTINEZ-RODRIGUEZ, xxx-xx-xxx...
TONEY L. SANDERS, JR., xxx-xx-xx...

CHAPLAIN CORPS

To be colonel

DAVID R. CHANCE, xxx-xx-x...
DONALD W. HILL, xxx-xx-x...

ARMY PROMOTION LIST

To be lieutenant colonel

JAMES A. BARRINEAU, JR., xxx-xx-xx...
CRAIG T. CENESKIE, xxx-xx-x...
PHILIP A. CHOULES, xxx-xx-xx...
ROBERT C. CLOUSE, JR., xxx-xx-xx...
STEPHEN M. DONNELLY, xxx-xx-x...
FREDERICK J. EMEHISER, xxx-xx-xx...
JOEL D. C. HART, xxx-xx-x...
FLOYD T. RICHARDSON, JR., xxx-xx-xx...
JOEL S. ROSTBERG, xxx-xx-xx...
STUART M. SEATON, JR., xxx-xx-xx...
STEPHEN A. STOHLA, xxx-xx-x...

CHAPLAIN CORPS

To be lieutenant colonel

JACKIE E. COOKE, xxx-xx-x...
KENNETH E. SPIELVOGEL, xxx-xx-xx...
ROYCE R. THOMAS, xxx-xx-x...

THE JUDGE ADVOCATE GENERAL'S CORPS

To be lieutenant colonel

BENJAMIN F. LUCAS II, xxx-xx-xx...

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE UNITED STATES ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE:

CHAPLAIN

To be colonel

CHRIST ANDERSON, xxx-xx-x...
RAYMOND BRADLEY, xxx-xx-x...
WINFIELD BUZBY, xxx-xx-x...
CHARLES D. CAMP, xxx-xx-x...
KENNETH CARPENTER, xxx-xx-x...
JAMES S. COOPER, xxx-xx-x...
GLENN FASANELLA, xxx-xx-x...
BILLY W. FOWLER, xxx-xx-x...
DONALD HANCHETT, xxx-xx-x...
RICHARD HARTSELL, xxx-xx-x...
ROBERT HUTCHERSON, xxx-xx-x...
HERBERT KITCHENS, xxx-xx-x...
WILLIAM MORRISON, xxx-xx-x...
HAROLD D. ROLLER, xxx-xx-x...
CARL V. THOMPSON, xxx-xx-x...

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, U.S.C. SECTIONS 593(A) AND 3385:

ARMY PROMOTION LIST

To be colonel

STEPHEN L. ELDER, xxx-xx-xx...
BOBBY G. GRIFFEY, xxx-xx-x...
ALFRED T. TAYLOR, JR., xxx-xx-xx...

MEDICAL CORPS

To be colonel

EDWARD W. ZEFF, xxx-xx-x...

ARMY PROMOTION LIST

To be lieutenant colonel

PAUL A. AKERS, xxx-xx-x...
DAN A. BERKEBILE, xxx-xx-x...
STANLEY E. BOTTS, xxx-xx-x...
PATRICK H. BURKE, xxx-xx-x...
HUBERT D. CAPPS, xxx-xx-xx...
MICHAEL R. DANIEL, xxx-xx-x...
WILLIE D. DAVENPORT, xxx-xx-xx...
QUINTON T. DIXON, JR., xxx-xx-x...
WILLIAM H. DODGEN, xxx-xx-x...
LESTER D. EISNER, xxx-xx-xx...
WILLIAM C. HARBOUR, xxx-xx-x...
JOHN C. HOLLAND, xxx-xx-x...
HARRY R. JENSEN, xxx-xx-xx...
CAROL A. JOHNSON, xxx-xx-x...
EUGENE H. LORGE, xxx-xx-x...
STEPHEN D. SCOTT, xxx-xx-xx...
KARL P. SMULLIGAN, xxx-xx-x...
NANCY J. WETHERILL, xxx-xx-x...

THE JUDGE ADVOCATE GENERAL'S CORPS

To be lieutenant colonel

JOHN H. GLADDEN, xxx-xx-x...

MEDICAL SERVICE CORPS

To be lieutenant colonel

DONALD R. JOHNSON, xxx-xx-x...

THE FOLLOWING-NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY OF THE UNITED STATES, UNDER THE PROVISIONS OF TITLE 10, U.S.C. SECTIONS 593(A) AND 3385:

ARMY PROMOTION LIST

To be colonel

JOHN C. ATKINSON, xxx-xx-x...
BRADLEY S. DUPEE, xxx-xx-xx...
DALLAS W. FANNING, xxx-xx-x...
DENNIS D. HEINTZ, xxx-xx-x...
RICHARD W. HUSKES, xxx-xx-x...
DENNIS J. LORD, xxx-xx-xx...
CRAIG L. LOWMAN, xxx-xx-x...
DAVID L. PERLMAN, xxx-xx-x...
RICHARD L. THROCKMORTON, xxx-xx-x...
ROBERT A. WILLIAMS, xxx-xx-x...

MEDICAL CORPS

To be colonel

THOMAS C. JEFFERSON, xxx-xx-xx...

MEDICAL SERVICE CORPS

To be colonel

ROYCE D. JONES, xxx-xx-x...

ARMY NURSE CORPS

To be colonel

ELIZABETH A. ROBB, xxx-xx-x...

THE JUDGE ADVOCATE GENERAL'S CORPS

To be colonel

PHILIP A. BADDOUR, JR., xxx-xx-xx...
JOHN E. DORSEY, xxx-xx-x...

ARMY PROMOTION LIST

To be lieutenant colonel

JOHN P. AUBIN, xxx-xx-x...
FREDDIE L. BARNARD, xxx-xx-xx...
WILLIAM M. BROWN, xxx-xx-x...
DENNIS L. CELLETTI, xxx-xx-xx...
PHILIP M. DEHENNIS, xxx-xx-xx...
KEVIN G. ELLSWORTH, xxx-xx-x...
DAVID R. ERDMANN, xxx-xx-x...
KENNETH H. ERWIN, xxx-xx-x...
PATRICK D. FLANAGAN, xxx-xx-xx...
JOHN T. FURLOW, xxx-xx-x...
CHARLES L. GABLE, xxx-xx-x...
RONALD M. GAY, xxx-xx-x...
DENNIS R. GILPATRICK, xxx-xx-xx...
MICHAEL J. GRIFFIN, xxx-xx-xx...
RALPH R. GRIFFIN, xxx-xx-xx...
DONALD R. HARMON, xxx-xx-x...
WILLIAM A. HIPSLEY, xxx-xx-xx...
THOMAS F. HOPKINS, xxx-xx-xx...
JAMES G. HUNT, xxx-xx-x...
THOMAS C. HUNT, xxx-xx-x...
THOMAS C. LAWING, xxx-xx-x...
JOHN T. MACKEY, xxx-xx-x...
RUSSELL A. MOORE, xxx-xx-x...
JIMMY R. MORGAN, xxx-xx-x...
MADONNA M. NUCE, xxx-xx-x...
PATRICK M. O'HARA, xxx-xx-x...
HARRY D. OWEN, JR., xxx-xx-x...
DARREN G. OWENS, xxx-xx-x...
JOHN M. PRICKETT, xxx-xx-xx...
RONALD J. RANDAZZO, xxx-xx-x...
CHARLES R. SEITZ, xxx-xx-xx...
LAWRENCE J. SLAVICEK, xxx-xx-xx...
STEVEN A. SMITH, xxx-xx-xx...

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, U.S.C., SECTION 593(A) AND 3370:

CHAPLAIN CORPS

To be colonel

JOSEPH B. FLATT, JR., xxx-xx-xxxx
RONALD S. GAUSS, xxx-xx-x...
EDWIN N. GRIFFIN, xxx-xx-x...
LARRY P. HENDERSON, xxx-xx-xx...
ELISHA C. HURLEY, xxx-xx-x...
JOHN P. KOHL, xxx-xx-x...
PAUL E. LUTHMAN, xxx-xx-x...
MICHAEL F. WEST, xxx-xx-xx...

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, U.S.C., SECTION 593(A) AND 3366:

CHAPLAIN CORPS

To be lieutenant colonel

HUMBERTO J. ACOSTA, xxx-xx-x...
JOHN F. ANDREWS, xxx-xx-xx...
HUBERT R. BAKER, xxx-xx-x...
JOHN D. BAKER, xxx-xx-x...
ARTHUR D. BEACHAM, xxx-xx-x...
LEOPOLD BILODEAU, xxx-xx-x...
ROBERT O. BROOKE, xxx-xx-x...
DAVID W. BROOKS, xxx-xx-x...
JERVIS O. BURNS, xxx-xx-xx...
RUSSELL N. BURR, xxx-xx-xx...
THOMAS R. BUTLER, xxx-xx-x...
WILLIAM CARMICHAEL, xxx-xx-x...
TONY M. CLEAVER, xxx-xx-x...
WESLEY D. COLLIER, xxx-xx-x...
DAVID M. COUCHMAN, xxx-xx-x...
GARY L. DANIELSEN, xxx-xx-xx...
JOHN R. DAVIS, xxx-xx-x...
THOMAS FIALKOWSKI, xxx-xx-x...
THOMAS A. FOH, xxx-xx-x...
STANLEY GARTHWAIT, xxx-xx-x...
RAYMOND L. GONIA, xxx-xx-x...
ROBERT H. GRESH, xxx-xx-xx...
MARVIN L. HARRIS, xxx-xx-x...
JAMES W. HOLIDAY, xxx-xx-x...
THOMAS R. HUDAK, xxx-xx-x...
WALTER HUTCHISON, xxx-xx-x...
JACK L. KROUGH, xxx-xx-x...
LEONARD G. LEE, xxx-xx-x...
MARK W. LENNEVILLE, xxx-xx-x...
CURTIS L. LESTER, xxx-xx-xx...
FRANK T. MARSHALL, xxx-xx-xx...
GARY P. MAUCK, xxx-xx-x...
CHARLES MCDOWELL, xxx-xx-x...
RICHARD MCLAUGHLIN, xxx-xx-x...
THOMAS MUSSELMAN, xxx-xx-x...
ALLEN R. NABORS, xxx-xx-x...
GEORGE E. PACKARD, xxx-xx-x...
THOMAS L. PALKE, xxx-xx-xx...
SHELBY R. PEARCY, xxx-xx-xx...
WILLIAM R. POMEROY, xxx-xx-x...
THADDEUS POSEY, xxx-xx-x...
PAUL R. RANDALL, xxx-xx-x...
MARVIN T. REYNOLDS, xxx-xx-x...
RICHARD ROCKWELL, xxx-xx-x...
GARY F. ROTHWELL, xxx-xx-x...
ALLEN E. RUSSELL, xxx-xx-xx...
NOLAN M. SAAREM, xxx-xx-x...
JAMES E. SAMS, xxx-xx-xx...
WILLIAM SCHLADEBECK, xxx-xx-x...
DAVID M. SHAFER, xxx-xx-x...
TOMMY W. SMITH, xxx-xx-x...
TIMOTHY L. STEEVES, xxx-xx-xx...
MARK C. STENBECK, xxx-xx-x...
MITCHELL STRANGE, xxx-xx-xx...
JOHN E. THAMES, xxx-xx-xx...
STEPHEN THOMASON, xxx-xx-x...
TOBE W. THOMPSON, xxx-xx-x...
JOHN S. VIRKLER, xxx-xx-xx...
AVERT O. WADE, xxx-xx-x...
JOHN A. WELCH, xxx-xx-x...
FRANK WITTOUCK, xxx-xx-xxxx
JEREMIAH F. WORMAN, xxx-xx-xx...
RICHARD M. WRIGHT, xxx-xx-x...

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE UNITED STATES ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE:

STEPHEN G. ABEL, xxx-xx-xx...
DAVID L. ABRAHAMSON, xxx-xx-x...
JOSEPH W. ADAMCZYK, xxx-xx-x...
RONALD A. ADKINS, xxx-xx-x...
HENRY S. ALCOTT, xxx-xx-x...
KEITH B. ALEXANDER, xxx-xx-xx
CHARLES W. ALSUP, xxx-xx-xx...
MICHAEL T. ANDERSON, xxx-xx-x...
MARY G. ANDREWS, xxx-xx-x...
ROGER I. ANGLIN, xxx-xx-x...
ALBERT E. ARNOLD, xxx-xx-x...
ROBERT W. ASH, xxx-xx-x...
HENRY J. ATWOOD, xxx-xx-x...
RICHARD R. BABBITT, xxx-xx-x...
RICHARD O. BAILER, xxx-xx-xx...
ROBERT M. BAILEY, xxx-xx-x...
THOMAS L. BAILEY, xxx-xx-xx...
GEORGE F. BARBER, xxx-xx-xx...
SAMUEL J. BARLOTTA, xxx-xx-xx...
LEE R. BARNES, JR., xxx-xx-xx...
DAVID W. BARNO, xxx-xx-x...
JOHN R. BATSTE, xxx-xx-xx...
RANDY R. BECKMAN, xxx-xx-x...
MATTHEW J. BELFORD, xxx-xx-xx...
WILLIAM H. BELL, xxx-xx-x...
MICHAEL D. BELLINO, xxx-xx-x...

DAVID J. BENJAMIN xxx-xx-xx...
SCOTT M. BERGERON xxx-xx-x...
WILLIAM R. BETSON xxx-xx-x...
ROBERT K. BILLINGS xxx-xx-x...
EDWARD D. BISHOP xxx-xx-x...
GARY G. BISHOP xxx-xx-x...
TEDDY D. BITNER xxx-xx-x...
WILLIAM M. BLACK xxx-xx-x...
JOSEPH M. BLANCO xxx-xx-x...
JOHN A. BONIN xxx-xx-x...
RANDALL D. BOOKOUT xxx-xx-x...
GUY M. BOURN xxx-xx-x...
ROBERT L. BOYLSTON xxx-xx-x...
THOMAS M. BRADY xxx-xx-x...
JONATHAN W. BRAKE xxx-xx-x...
JOSEPH J. BRAND xxx-xx-xx...
JAMES L. BRAZEALE xxx-xx-xx...
LISLE K. BROOK xxx-xx-x...
ROY A. BROOKS xxx-xx-x...
HERBERT G. BROWN xxx-xx-x...
ROBERT P. BROWN xxx-xx-x...
RALPH M. BRUNER xxx-xx-x...
MARK A. BRZOZOWSKI xxx-xx-x...
PETER J. BUCHA xxx-xx-x...
RONALD L. BURGESS xxx-xx-x...
GORDON J. BURKE xxx-xx-x...
ROBERT W. BURKARDT xxx-xx-x...
BILLY J. BURSE xxx-xx-xx...
JEFFREY E. BURTON xxx-xx-xx...
MICHAEL A. BURTON xxx-xx-x...
PAUL J. BURTON xxx-xx-x...
JACK H. CAGE xxx-xx-x...
KEVIN T. CAMPBELL xxx-xx-x...
PHILIP L. CAMPBELL xxx-xx-xx...
RAYMOND P. CANTON xxx-xx-x...
THOMAS M. CARLIN xxx-xx-x...
GARY C. CARLSON xxx-xx-x...
KATHRYN G. CARLSON xxx-xx-x...
WALDEMAR E. CARMONA xxx-xx-x...
THOMAS T. CASH xxx-xx-x...
RANDALL G. CATTS xxx-xx-xx...
DANIEL S. CHALLIS xxx-xx-x...
EDWIN CHAMBERLAIN xxx-xx-x...
ROGER J. CHANNING xxx-xx-x...
JOSEPH W. CHESLEY xxx-xx-xx...
PETER W. CHIARELLI xxx-xx-xx...
JONATHAN H. COFER xxx-xx-x...
DOUGLAS R. COFFEY xxx-xx-x...
BRUCE R. CONOVER xxx-xx-x...
SCOTT W. CONRAD xxx-xx-x...
JAMES D. COOMLER xxx-xx-x...
WINTHROP H. COOPER xxx-xx-x...
JOHN F. CORBETT xxx-xx-x...
DAVID M. COWAN xxx-xx-x...
CHARLES W. COX xxx-xx-x...
JAMES C. CRINEAN xxx-xx-x...
JAMES W. CRITZ xxx-xx-x...
RICHARD D. CROSBY xxx-xx-x...
ROBERT T. DAIL xxx-xx-x...
STEPHEN C. DALY xxx-xx-x...
JESSE M. DANIELSON xxx-xx-xx...
STEPHEN A. DANNER xxx-xx-x...
LAWRENCE E. DAVIS xxx-xx-x...
MARION T. DAVIS xxx-xx-x...
WILLIAM J. DAVIS xxx-xx-x...
GEORGE L. DEASON xxx-xx-x...
ROBERT L. DECKER xxx-xx-x...
RICHARD R. DEMERS xxx-xx-x...
MARTIN E. DEMPSEY xxx-xx-x...
ROLLAND A. DESSERT xxx-xx-x...
JOHN P. DIAS xxx-xx-x...
JEFFREY B. DIENNO xxx-xx-xx...
ROBERT G. DINSICK xxx-xx-x...
ANTHONY C. DIRIENZO xxx-xx-x...
RAYMOND A. DOMASKIN xxx-xx-x...
JEFFERY L. DONALD xxx-xx-xx...
JOHN V. DONOVAN xxx-xx-x...
BARBARA DOORNINK xxx-xx-x...
CHARLES H. DOVE xxx-xx-x...
PAUL N. DUNN xxx-xx-x...
DENNIS DUPLANTIER xxx-xx-x...
ROBERT A. DURINGER xxx-xx-x...
JEANETTE K. EDMUNDS xxx-xx-xx...
DAVID J. EGGLE xxx-xx-x...
KARL W. EIKENBERRY xxx-xx-x...
FRANKLIN E. ELKINS xxx-xx-xx...
STEVEN A. EMISON xxx-xx-x...
JOHN J. ERB II xxx-xx-xx...
DEAN R. ERTWINE xxx-xx-x...
JOHNNY S. EVERETTE xxx-xx-xx...
DAVID A. FAGAN xxx-xx-x...
DANIEL R. FAKE xxx-xx-x...
ANDREW J. FALLON xxx-xx-x...
STEPHEN C. FEE xxx-xx-xx...
WILLIAM J. FENNELL xxx-xx-xx...
OTIS B. FERGUSON xxx-xx-x...
CHARLES W. FLETCHER xxx-xx-xx...
ALBERT M. FLEUMER xxx-xx-xx...
STEVEN W. FLOHR xxx-xx-x...
HAYWARD S. FLORER xxx-xx-x...
CHRISTOP FORNECKER xxx-xx-x...
ROBERT D. FOX xxx-xx-x...
ARCHIE M. FRANKS xxx-xx-x...
DOUGLAS A. FRAZE xxx-xx-x...
MICHAEL E. FREEMAN xxx-xx-x...
ROBERT J. FULCHER xxx-xx-xx...
CLYDE R. GALLES xxx-xx-x...
ALBERT B. GARCIA xxx-xx-x...
JEREMIAH GARRETSON xxx-xx-xx...
RUSSELL K. GARRETT xxx-xx-xx...
MARK H. GERNER xxx-xx-x...
GUILLERMO GIANDONI xxx-xx-x...
JAMES P. GIBBONS xxx-xx-xx...
CRAIG H. GLASSNER xxx-xx-x...
THOMAS R. GOEDKOOP xxx-xx-x...
CHARLES R. GOLLA xxx-xx-x...
EDWIN S. GOODALE xxx-xx-x...
JOHN D. GORRELL xxx-xx-x...
ROBERT J. GRAEBENER xxx-xx-xx...
DWIGHT GRAY xxx-xx-x...
RICHARD A. GRIMES xxx-xx-x...
MYRON J. GRISWOLD xxx-xx-x...
CHARLES J. GUTA xxx-xx-xx...
RICK GUTWALD xxx-xx-x...
DAVID B. HALL xxx-xx-x...
ALBERT J. HAMILTON xxx-xx-xx...
MICHAEL L. HAMMACK xxx-xx-x...
ALAN R. HAMMOND xxx-xx-x...
FRANK R. HANCOCK xxx-xx-x...
JOSEPH M. HANRATTY xxx-xx-xx...
JAMES R. HARDIN xxx-xx-x...
DENNIS E. HARDY xxx-xx-x...
GLENN M. HARNED xxx-xx-x...
DAVID L. HARTMAN xxx-xx-x...
JULIAN B. HARWANKO xxx-xx-x...
WILLIAM J. HATCH xxx-xx-x...
STEVEN R. HAWKINS xxx-xx-x...
RONALD L. HAWTHORNE xxx-xx-x...
SHAROLYN I. HAYES xxx-xx-x...
GORDO HEARNSBERGER xxx-xx-x...
JERRY M. HENDERSON xxx-xx-xx...
PAUL H. HERBERT xxx-xx-x...
JAMES L. HICKEY xxx-xx-x...
SAMUEL W. HIGDON xxx-xx-x...
CHRISTOPHER L. HILL xxx-xx-xx...
THOMAS M. HILL xxx-xx-x...
ROBERT A. HOBBS xxx-xx-x...
THOMAS J. HODGINI xxx-xx-x...
EDWARD E. HOFFER xxx-xx-x...
HUGH F. HOFFMAN xxx-xx-x...
JOHN W. HOFFMAN xxx-xx-x...
JAMES F. HOLCOMB xxx-xx-x...
JOHN W. HOLLY xxx-xx-x...
DON R. HOPKINS xxx-xx-x...
HENRY C. HOSTETTER xxx-xx-x...
JAMES R. HOUGNON xxx-xx-x...
JOSEPH E. HUBER xxx-xx-xx...
CLARENCE T. HUNTER xxx-xx-x...
MELVIN E. HUNTER xxx-xx-x...
TYRANNY A. HUNTER xxx-xx-x...
DAVID H. HUNTOON xxx-xx-x...
LARRY F. ICENOGLE xxx-xx-x...
RANDALL R. INOUYE xxx-xx-x...
JONATHAN JACOBSEN xxx-xx-x...
MARTHA G. JAMES xxx-xx-x...
HAL M. JOHNSON xxx-xx-x...
JEROME JOHNSON xxx-xx-x...
JOHN F. JOHNSON xxx-xx-x...
KARL W. JOHNSON xxx-xx-x...
KENNETH F. JOHNSON xxx-xx-xx...
LONNIE L. JOHNSON xxx-xx-x...
NOBLE T. JOHNSON xxx-xx-x...
GEORGE T. JONES xxx-xx-xx...
PHILIP M. JONES xxx-xx-xx...
KEITH M. JOSEPH xxx-xx-xx...
GERALD W. JOYCE xxx-xx-x...
PETER N. KAFKALAS xxx-xx-x...
JOHN P. KALE xxx-xx-x...
ROBERT P. KANE xxx-xx-x...
MICHAEL KARPINSKY xxx-xx-x...
CHARLES R. KAYLOR xxx-xx-x...
JOHN D. KENNEDY xxx-xx-x...
JOHN M. KENNEY xxx-xx-x...
ROBERT F. KENNEY xxx-xx-x...
JOHN A. KIDDER xxx-xx-x...
DARRYL W. KILGORE xxx-xx-x...
MARSHA L. KILLAM xxx-xx-x...
JOHN F. KIMMONS xxx-xx-x...
HENRY L. KINNISON xxx-xx-x...
MICHAEL A. KIRBY xxx-xx-x...
ALPHONSO W. KNIGHT xxx-xx-x...
WILLIAM S. KNIGHTLY xxx-xx-x...
JAMES S. KORTZ xxx-xx-xx...
KURT L. KRATZ xxx-xx-x...
MICHAEL F. KREJCI xxx-xx-xx...
MYRON P. KRYSCHTALL xxx-xx-x...
ROBERT KUBISZEWSKI xxx-xx-x...
HOWARD F. KUENNING xxx-xx-x...
STEPHEN J. KUFFNER xxx-xx-xx...
ROBERT A. KUTH xxx-xx-x...
ILONA W. KWIECIEN xxx-xx-x...
BRUCE R. LAFERRIERE xxx-xx-xx...
DANIEL F. LALLY xxx-xx-xx...
KENNETH A. LAPLANTE xxx-xx-xx...
TELFORD W. LAREW xxx-xx-x...
SCOTT R. LARSON xxx-xx-x...
RICHARD W. LASZOK xxx-xx-x...
JOHN C. LATIMER xxx-xx-x...
JON S. LAURICH xxx-xx-x...
JAY E. LAWSON xxx-xx-x...
RICHARD D. LEE xxx-xx-x...
RICHARD B. LEIBERT xxx-xx-xx...
RAYMOND J. LEISNER xxx-xx-xx...
STANLEY C. LEJA xxx-xx-xx...
THOMAS J. LENEY xxx-xx-x...
BYRON R. LESTER xxx-xx-x...
JOHN P. LEWIS xxx-xx-x...
WILLIAM H. LIXEY xxx-xx-x...
CHARLES D. LOWMAN xxx-xx-x...
CHARLES A. LUCIA xxx-xx-x...
MICHAEL L. LUSTIG xxx-xx-x...
THOMAS, MACKIEWICZ xxx-xx-x...
GLENN A. MACKINNON xxx-xx-x...
STEPHEN C. MAIN xxx-xx-x...
JESUS A. MANGUAL xxx-xx-x...
WILLIAM J. MARTINEZ xxx-xx-xx...
STEPHEN B. MASSEY xxx-xx-xx...
JAMES P. MAULT xxx-xx-xx...
ARTHUR G. MAXWELL xxx-xx-x...
ROBERT L. MAYES xxx-xx-x...
MICHAEL MAZZUCCHI xxx-xx-x...
WILLIAM D. MCCUNE xxx-xx-x...
CHARLES J. MCKENZIE xxx-xx-xx...
DANNY R. MCKNIGHT xxx-xx-x...
WILLIAM MCMANAWAY xxx-xx-x...
DEE A. MCWILLIAMS xxx-xx-x...
GLENN M. MELTON xxx-xx-x...
EDMOND K. MELVILLE xxx-xx-x...
CONRAD V. MEYER xxx-xx-x...
KENT D. MILLER xxx-xx-xx...
SCOTT F. MILLER xxx-xx-xx...
THOMAS G. MILLER xxx-xx-x...
WESLEY C. MILLER xxx-xx-xx...
JOHN M. MITCHELL xxx-xx-x...
ROBERT W. MIXON xxx-xx-x...
BILL R. MOORE xxx-xx-x...
GORDON K. MOORE xxx-xx-x...
DONALD R. MORAN xxx-xx-x...
PHILIP S. MORRIS xxx-xx-xx...
GREGORY V. MORTON xxx-xx-x...
JOHN B. MOSELEY xxx-xx-x...
KLAUS M. MULLINEX xxx-xx-x...
MICHAEL T. MULVENON xxx-xx-x...
GEORGE J. MURATI xxx-xx-xx...
JAMES T. MURATSUCHI xxx-xx-xx...
EDWARD G. MURDOCK xxx-xx-x...
STEVEN H. MYER xxx-xx-x...
SCOTT E. NAHRWOLD xxx-xx-x...
GEORGE R. NELSON xxx-xx-x...
DONALD D. NEWLIN xxx-xx-x...
CLYDE M. NEWMAN xxx-xx-x...
DAVID N. NICHOLSON xxx-xx-x...
RICHARD NICKERSON xxx-xx-x...
PATRICIA L. NILO xxx-xx-x...
JERRY J. NOVOSAD xxx-xx-xx...
RAYMOND T. ODIERNO xxx-xx-x...
ERIC T. OLSON xxx-xx-x...
DAVID R. OSLIN xxx-xx-x...
VIRGIL L. PACKETT xxx-xx-xx...
JOSEPH P. PADDOCK xxx-xx-xx...
DONALD D. PARKER xxx-xx-x...
JAMES W. PARKER xxx-xx-xx...
BRUCE M. PARKINS xxx-xx-x...
JAMES S. PATTERSON xxx-xx-xx...
THOMAS J. PAWLOWSKI xxx-xx-x...
GRAIG H. PEARSON xxx-xx-x...
MICHAEL A. PEARSON xxx-xx-x...
JOHN R. PENMAN xxx-xx-x...
JESSE M. PEREZ xxx-xx-xx...
ELBERT N. PERKINS xxx-xx-xx...
DANIEL PETERJOHN xxx-xx-xx...
JOSEPH F. PETERSON xxx-xx-xx...
DAVID H. PETRAEUS xxx-xx-xx...
WILLIAM R. PHILLIPS xxx-xx-xx...
JAMES H. PILLSBURY xxx-xx-xx...
LALIT K. PIPLANI xxx-xx-xx...
RICHARD L. PITTS xxx-xx-xx...
GREGORY F. POTTS xxx-xx-xxxx
WILLIAM W. POWELL xxx-xx-x...
JAMES E. PRESCOTT xxx-xx-xx...
RICHARD P. PRICE xxx-xx-xx...
WILLIAM C. PUDDY xxx-xx-x...
MARILYN QUAGLIOTTI xxx-xx-x...
JOHN C. RACE xxx-xx-x...
LESLIE L. RATLIFF xxx-xx-x...
MARSHALL C. REED xxx-xx-x...
WILLIAM A. REESE xxx-xx-x...
THOMAS W. RESAU xxx-xx-x...
MAYNARD S. RHOADES xxx-xx-x...
RICHARD RICCARDELLI xxx-xx-x...
DONALD R. RIEDEL xxx-xx-x...
DON T. RILEY xxx-xx-x...
JAMES P. RINDLER xxx-xx-xx...
LEON H. RIOS xxx-xx-x...
TOMMY H. ROBERSON xxx-xx-x...
MICHAEL D. ROCHELLE xxx-xx-x...
WILLIAM RODAKOWSKI xxx-xx-x...
RAYMOND L. RODON xxx-xx-x...
JOSE A. RODRIGUEZ xxx-xx-xx...
STEVEN L. ROOP xxx-xx-x...
DALE E. ROTH xxx-xx-x...
MURRY J. RUPERT xxx-xx-xx...
OWEN D. RYAN I xxx-xx-x...
RICHARD M. SACKETT xxx-xx-x...
TIMOTHY L. SANFORD xxx-xx-x...
HARRY J. SAWYER xxx-xx-x...
DONALD F. SCHENK xxx-xx-x...
STEVEN P. SCHOOK xxx-xx-x...
JEFFREY SCHREPPLE xxx-xx-xxxx
GLEN L. SCOTT xxx-xx-x...
JACK O. SHAFER xxx-xx-xx...
MICHAEL D. SHAW xxx-xx-x...
STEPHEN D. SHERRILL xxx-xx-xx...
ROBERT L. SHIRRON xxx-xx-xx...
JAMES D. SHULSE xxx-xx-xx...
TIMOTHY J. SIELSKI xxx-xx-xx...
JAMES H. SILCOX xxx-xx-x...
GRANT M. SMITH xxx-xx-x...
MICHAEL L. SMITH xxx-xx-x...
ROBERT E. SMITH xxx-xx-x...
ROBERT L. SMITH xxx-xx-x...
WILLIAM T. SMITH xxx-xx-x...
STEPHEN M. SPEAKES xxx-xx-xx...
EDGAR E. STANTON xxx-xx-x...
PHILIP R. STERBLING xxx-xx-xx...
BILLY W. STEVENS xxx-xx-xx...

THOMAS F., STEWART xxx-xx-xx...
JAMES R. STORDAHL xxx-xx-xx...
TEDDY A. STOUT xxx-xx-x...
SHAND H. STRINGHAM xxx-xx-x...
THOMAS W. SUITT xxx-xx-x...
FREDERIC SUNDSTROM xxx-xx-xx...
LEONARD G. SWARTZ xxx-xx-x...
ANTONIO M. TAGUBA xxx-xx-x...
EDMUND S. TAKEYA xxx-xx-x...
JAMES P. TATUM xxx-xx-xx...
JOE G. TAYLOR, JR. xxx-xx-xx...
LOUIS E. TAYLOR xxx-xx-x...
HARVEY A. TESTON xxx-xx-x...
MICHAEL R. THOMPSON xxx-xx-x...
JAMES D. THURMAN xxx-xx-x...
DONALD R. TINDALL xxx-xx-x...
STEVEN A. TOLLE xxx-xx-xx...
DENNIS P. TREECE xxx-xx-xx...
RICHARD J. TREHEARNE xxx-xx-xx...
WILLIAM A. TUCKER xxx-xx-x...
BURTON W. TULKKI xxx-xx-x...
WALTER VANDERBEEK xxx-xx-x...
DAVID B. VAUGHAN xxx-xx-x...
WILLIAM S. VOGEL xxx-xx-x...
LONNIE D. VONA xxx-xx-x...
THOMAS G. WALLER xxx-xx-x...
CHARLES C. WARE xxx-xx-x...
JOHN D. WARREN xxx-xx-x...
JOHN S. WARREN xxx-xx-x...
JAMES M. WASHINGTON xxx-xx-x...
GEORGE S. WEBB xxx-xx-x...
WILLIAM L. WEBB xxx-xx-x...
WILLIAM G. WEBSTER xxx-xx-x...
DONALD G. WEIR xxx-xx-x...
JOHN C. WELCH xxx-xx-x...
MARK S. WENTLENT xxx-xx-x...
JERRY WIEDEWITSCH xxx-xx-xx...
PHILIP L. WILKERSON xxx-xx-xx...
BARRY E. WILLEY xxx-xx-x...
JAMES M. WILLEY xxx-xx-xx...
BENNIE E. WILLIAMS xxx-xx-xx...
EDWARD W. WILLIAMS xxx-xx-x...
JAMES R. WILSON xxx-xx-xx...
TOD J. WILSON xxx-xx-x...
WILLIAM E. WOLF xxx-xx-x...
ALFRED WOODBRIDGE xxx-xx-x...
DONALD D. WOOLFOLK xxx-xx-x...
BARRY E. WRIGHT xxx-xx-x...
RALPH F. WRIGHT xxx-xx-xx...
HOWARD W. YELLEN xxx-xx-x...

IN THE MARINE CORPS

THE FOLLOWING-NAMED LIEUTENANT COLONELS OF THE U.S. MARINE CORPS FOR PROMOTION TO THE PERMANENT GRADE OF COLONEL UNDER THE PROVISIONS OF SECTION 624 OF TITLE 10, UNITED STATES CODE:

To be colonel

CLIFFORD M. ACREE xx...
MARK W. ADAMS xx...
NANCY P. ANDERSON xx...
STEVEN D. ANDERSON xx...
LARRY B. BARNES xx...
RICHARD G. BARR x...
RICHARD M. BARRY xx...
MARK E. BENNETT xx...
ANTHONY D. BLICE xx...
MARK J. BROUSSEAU xx...
DAVID S. BURGESS xx...
CESARE CARDI xx...
MICHAEL E. CARROLL xx...
EZEQUIEL CAVAZOS, JR. xx...
ROBERT L. CLICK xx...
TONY L. CORWIN xx...
MARK A. COSTA xx...
LYN L. CRESWELL xx...
JACK C. CUDDY xx...
EDDIE A. DANIELS, III xx...
ALPHONSE G. DAVIS xx...
ROBERT C. DICKERSON, JR. xx...
THOMAS E. DILLARD, JR. xx...
PATRICK E. DONAHUE xx...
DAVID G. DOTTERER xx...
TERRENCE P. DUGAN xx...
NEIL S. FOX, II xx...
RONALD F. FRANKS xx...
DAVID D. FULTON x...
TIMOTHY F. GHORMLEY xx...
BOBBY L. GRICE xx...
MARGARET N. GUERRERO xx...
STEPHEN D. HANSON xx...
DOUGLAS O. HENDRICKS xx...
ROBERT J. HERKENHAM xx...
LEONARDO G. HERNANDEZ xx...
KENNETH W. HILL xx...
JAMES E. HULL xx...
JAMES V. HUSTON xx...
PETER A. JAMES xx...
JOHN A. KEENAN xx...
JOHN B. KISER xx...
KEVIN E. LEFFLER xx...
WALTER E. LEHNER xx...
MICHAEL R. LEHNERT xx...
DAVID M. LUMSDEN x...
GARY W. MILLER xx...
GEORGE E. MONARCH, III xx...
JOHN T. MOORE xx...
THOMAS L. MOORE xx...
RICHARD F. NATONSKI xx...
PAUL W. OTOOLE, JR. xx...
DAVID J. RASH xx...
DOUGLAS C. REDLICH xx...
THERON D. ROGERS xx...
DANIEL R. ROSE xx...
NOLAN D. SCHMIDT x...
ROBERT W. SEMMLER xx...
WILLIAM X. SPENCER xx...
LAWRENCE D. STAAK xx...
JOSEPH J. STREITZ xx...
MARK E. SWANSTROM xx...
MICHAEL J. SWORDS xx...
JOHN M. TASKA xx...
JOHN C. TRELEASE xx...
LAWRENCE E. TROFFER, JR. xx...
STUART W. WAGNER xx...
MICHAEL B. WARLICK xx...
ALBERT A. WASHINGTON xx...
JOHN H. WATSON xx...
WAYNE E. WICKMAN xx...
GLENN R. WILLIAMS xx...
JOHN D. WOODS xx...
DAVID H. YOUNG xx...

IN THE MARINE CORPS

THE FOLLOWING-NAMED CAPTAINS OF THE U.S. MARINE CORPS FOR PROMOTION TO THE PERMANENT GRADE OF MAJOR UNDER THE PROVISIONS OF SECTION 624 OF TITLE 10, UNITED STATES CODE:

To be major

RONNIE L. PATRICK xx...
ELDON W. BINGHAM xx...
RONALD S. MCCLAIN xx...
WILLIAM D. HETTINGER xx...
DOUGLAS O. FEGENBUSH, JR. xx...
BRYAN J. SMITH xx...
STEVEN M. LESHER xx...
DAVID C. MYERS xx...
GEORGE P. SANDLIN xx...
JOHN D. SCHNEIDER xx...
JOSEPH A. SCUTELLARO xx...
ROMEO NELSON xx...
DALE F. WILLEY xx...
PETER A. GROGAN xx...
DAVID W. BANKS xx...
KURT M. CONRAD xx...
FRANKLIN D. BAKER xx...
MURRAY T. GUPTILL, JR. xx...
PATRICK M. HAINES xx...
GUY D. MEDOR xx...
DAVID G. VRANCIC xx...
DAVID J. KESTNER xx...
WADE C. HALL xx...
JAMES T. KUHN xx...
KENNETH D. ENZOR xx...
THEODORE J. FERRELL xx...
JOHN R. EWERS, JR. xx...
LOUIS J. PULEO xx...
LEE B. RAGLAND xx...
DAVID M. BLAUL xx...
GREGORY L. HAUCK xx...
WILLIAM R. WALSH xx...
DEAN M. SCHUBERT xx...
ROBERT B. MACTOUGH, JR. xx...
MICHAEL J. LAMBIASE xx...
CRAIG G. HARDCASTLE xx...
WILLIAM A. JOHNSON x...
ROBERT Q. BRUGGEMAN xx...
JOHN R. INGRAM xx...
GERALD F. BURKE xx...
GERALD L. SMITH xx...
JAMES W. MCKELLAR xx...
DAVID L. CLOSE xx...
JOHN D. REYES xx...
CHARLES D. OHERN II xx...
STEPHEN D. MARCHIORO xx...
JOHN M. BURT xx...
PHILIP A. CAIN xx...
CHARLES B. PEABODY xx...
DAVID E. SMITH xx...
STEVEN J. HERTIG xx...
GEORGE WONG xx...
TIMOTHY J. DEVIN xx...
ROBERT D. JENSEN xx...
EDWARD YARNELL xx...
JOSEPH H. WHEELER III xx...
HERMINIO TORRES, JR. xx...
CHRISTOPHER S. OWENS xx...
MATTHEW P. SCHWOB xx...
THOMAS B. GIBBS xx...
PAUL K. SCHREIBER xx...
TERESA J. AMBERG xx...
JOHN E. STONE xx...
CHESTER A. ARNOLD xx...
ROBERT T. HATHAWAY, JR. xx...
GEORGE B. BABB, JR. xx...
WILLIAM F. GRESHAM xx...
JAMES P. VANETTEN, JR. xx...
JOSE A. HERNANDEZ, JR. xx...
TOMMY L. HESTER xx...
ROBERT G. LANG xx...
MARGARET A. KUHN xx...
PATRICK T. RILEY xx...
MICHAEL J. MATRONI xx...
RONALD J. COLYER xx...
HOWARD W. FELDMEIER, JR. xx...
PAUL J. STENGER xx...
JAMES P. ROSENTHAL xx...
TIMOTHY R. DALLY xx...
ROBERT G. CAHILL xx...
STEVEN M. HOLTZHOUSER xx...
LAWRENCE A. PLATT, JR. xx...
MARC L. HOHLE xx...
CAROL W. MACDONALD xx...
CHARLES R. FRAWLEY xx...
FREDERICK S. MCHENRY xx...
JAMES H. SORG, JR. xx...
JOHN L. GODBY xx...
AARON E. ALDRIDGE xx...
RICHARD M. PARSONS xx...
KENNETH SMITH xx...
DAVID R. LANCE x...
SCOTT J. KOSTER xx...
RODNEY S. NOLAN xx...
MICHAEL J. MASON xx...
MICHAEL O. SPARR xx...
GROVER C. LEWIS III xx...
PATRICK J. MCLAIN xx...
JEFFREY D. WILSON xx...
WALTER J. LACON, JR. xx...
WILLIAM C. TURNER xx...
JENNIFER L. LOUISOT xx...
PATRICK J. MOCK xx...
MICHAEL J. PRIMEAU xx...
MICHAEL D. FORD xx...
JAMES M. DOCHERTY x...
ERIC D. BARTCH xx...
PETER D. MORNEAU x...
JOSEPH JUDGE xx...
ALEJANDRO, GIERBER xx...
ROBERT A. PUTZ, JR. xx...
PAT D. PINKSTON xx...
CAREY L. BRICKELL xx...
LARRY J. RECTOR xx...
SAMUEL L. JORDAN xx...
THOMAS D. RICHEY xx...
BRIAN E. DANIELSON x...
JAMES J. BUCKLEY xx...
JAMES B. HOYNES xx...
DAVID R. LEPPELMEIER xx...
CHRISTOPHER T. CRAIG xx...
WILLIAM L. KROELINGER, JR. xx...
JEFFREY M. PETERSON xx...
ANTHONY J. CACCIATORE xx...
WILLIAM J. COOPER xx...
RUSSELL M. RIVERS xx...
ANTHONY ARDOVINO x...
THOMAS M. GASKILL xx...
BRADLEY J. SILLMAN xx...
WILLIAM P. MIZERAK xx...
BART W. CLARK xx...
SCOTT A. DALKE xx...
THOMAS L. ENTERLINE xx...
STUART C. HARRIS xx...
JOHN R. BUCHER xx...
CYNTHIA M. ATKINS x...
MICHAEL S. HAAS xx...
THOMAS E. RODABAUGH xx...
MICHAEL L. MILLIGAN x...
JULIAN V. DEES xx...
FRANK R. RYMAN, JR. xx...
JAMES M. CAIN xx...
DOMINGO K. SALAZAR xx...
MARCUS R. SMITH xx...
EDWARD O. GRIFFITHS xx...
GUY A. YEAGER xx...
RICHARD W. THELIN xx...
KIRK T. BARLEY xx...
ROBERT L. DIXON, JR. xx...
THOMAS C. SIEBENTHAL xx...
HANS J. MILLER xx...
TED A. PARKS xx...
PATRICK S. PENN xx...
ROYAL P. MORTENSON xx...
JOHN W. BULLARD, JR. xx...
CARL E. HASELDEN, JR. xx...
ANDREW W. HOVANEC xx...
VICTOR F. BALASI x...
ERIC B. YONKEE xx...
KIRK P. SKINNER xx...
TODD D. STEPHAN x...
GEORGE A. LEMBRICK xx...
RICHARD S. PARKER, JR. xx...
JORGE L. BARRERA xx...
GREGORY T. MASCK xx...
STEVEN D. MIEIR xx...
WILLIAM D. DELANO xx...
MICHAEL R. RICHARDS xx...
JORGE ASCUNCE xx...
GEORGE R. KNISLEY xx...
DARRELL F. RECTOR, JR. xx...
GARY M. DENNING xx...
KEVIN T. MCCUTCHEON xx...
CHESTER E. JOLLEY xx...
DAVID BLASKO xx...
DANIEL F. FOLEY xx...
DONALD L. BARKER xx...
NATHANIEL HARLEY, JR. xx...
STEPHEN M. MIRANDA x...
CHRISTOPHER E. HOLZWORTH xx...
GREGORY P. WOODS xx...
RICHARD O. SPROUT xx...
DOUGLAS A. MARCY xx...
ROBERT M. STEININGER xx...
MICHAEL V. MALONE xx...
ROBERT S. HELLMAN xx...
STEPHEN P. FINN xx...
MATTHEW G. OCHS xx...
TIMOTHY C. BRENNEMAN xx...
TROY S. CAUDILL xx...
GEORGE L. YOUNG, III xx...
LARRY FULWILER xx...
ROBERT E. CLAY xx...
JOHN W. SIMMONS xx...
MICHAEL A. WESCHE xx...
RONALD WATSON, JR. xx...

VAUGHN P. FOX, xx...
DOUGLAS A. GETHERS, xx...
KEVIN M. MACDOUGALL, x...
JONATHAN P. HULL, xx...
KEVIN G. REED, xx...
JOHN D. LLOYD, x...
STEPHEN L. BAKER, xx...
WILLIAM GILLESPIE, xx...
CLIFTON BOURDA, x...
CLYDE FRAZIER, JR., xx...
BRETT A. MILLER, x...
DOUGLAS E. KEELER, xx...
EDDIE S. RAY, xx...
ROBERT B. GORSKI, x...
THOMAS R. OCONNELL, x...
ROBERT F. HEDELUND, xx...
BRUCE A. WHITE, x...
PAUL C. SOUTHWORTH, III, x...
CLAYTON E. SMITH, x...
BEN D. HANCOCK, x...
JEFFREY D. VOLD, x...
MARK R. KALMBACH, x...
MALCOLM B. LEMAY, x...
WILLIAM K. LIETZAU, x...
MICHAEL G. WHITECOTTON, x...
DANIEL C. HAHNE, xx...
KENT A. GALVIN, xx...
BRIAN D. BEAUDREAULT, xx...
JOSEPH N. EMBLER, x...
STEVEN M. ZOTTI, xx...
JOHN F. BUFORD, xx...
SANDRA J. JELLISON, xx...
FRANK L. TAPIA, JR., xx...
JOHN W. GUTHRIE, x...
ROBERT M. CRAWFORD, x...
MICHAEL J. POPOVICH, x...
ELIZABETH K. TESTER, xx...
THOMAS P. DALY, JR., xx...
STEVEN L. SUDDRETH, xx...
ROBERT K. FRICKE, x...
DANIEL E. CULBERT, x...
JOHN F. OLEARY, xx...
JUSTIN B. ORABONA, xx...
ALBERT K. DIXON, III, xx...
JOHN RUPP, xx...
HERMAN S. CLARDY, III, xx...
MICHAEL F. CAMPBELL, x...
VAL T. FRANKLIN, xx...
BRYAN V. RIEGEL, xx...
JOEL YOURKOWSKI, x...
MICHAEL A. ROCCO, x...
JEFFERY A. BOWDEN, xx...
ROBERT O. SINCLAIR, x...
RICHARD W. SCHIEKE, JR., x...
KEVIN D. TAYLOR, xx...
MICHAEL W. OPPLIGER, x...
MICHAEL H. BEALL, x...
GREGORY E. HAUSER, xx...
JAMES E. REILLY, III, xx...
PAUL K. RUPP, xx...
JAMES S. BEATON, xx...
PAUL J. WARHOLA, xx...
JAMES D. HOOKS, x...
RICHARD K. DAVIDSON, xx...
RICHARD L. SIMCOCK, II, x...
JEFFREY S. WEIS, xx...
JOHN A. DELCOLLIANO, x...
LAURA J. SAMPSEL, xx...
RICHARD P. FLATAU, JR., xx...
ROBERT SHAYNE, xx...
ROBERT W. MARSHALL, x...
THOMAS J. CONNALLY, x...
CRAIG S. BOWERS, x...
SEAN M. FREEMAN, xx...
CHARLES E. BRIDGEMAN, xx...
DAVID H. WILKINSON, x...
JOSEPH A. MAUNEY, JR., xx...
DARRELL L. THACKER, JR., xx...
KEVIN L. SMITH, xx...
JOSEPH G. SMITH, xx...
JON L. FEINBERG, xx...
CURTIS S. AMES, xx...
OWEN M. DEVEREUX, x...
FREDERICK P. THORNTON, JR., x...
ANDREW H. SCHLAEPFER, xx...
THOMAS J. ANDERSON, xx...
ROBERT E. PINDER, x...
KEITH W. DANEL, x...
DALE E. HOUCK, x...
GEORGE S. WHITBECK, x...
GEOFFERY W. STOKES, xx...
MICHAEL J. FOLEY, xx...
JOHN H. OHEY, x...
RICHARD C. MCMONAGLE, x...
GEORGE H. BRISTOL, x...
MICHAEL A. OHALLORAN, x...
FRANK H. MINER, III, xx...
PETER T. NICHOLSON, xx...
ROBERT H. BUSICK, xx...
DOUGLAS J. WADSWORTH, JR., x...
JAMES D. TURLIP, xx...
GARETH F. BRANDL, xx...
DENNIS R. DICKENSON, xx...
CHRISTOPHER G. SULLIVAN, xx...
GLENN P. WELLS, xx...
GARY A. STRASMANN, xx...
JAY D. WALKER, xx...
LEWIS A. CRAPAROTTA, xx...
BRIAN S. FLETCHER, xx...
KEVIN L. FOLEY, xx...
ALBERT DIAZ, xx...
ANTHONY J. SANCHEZ, xx...

MARCUS G. MANNELLA, x...
TIMOTHY W. FITZGERALD, x...
JOHN H. FEAIRHELLER, JR., xx...
RODNEY H. TAPLIN, x...
NICHOLAS B. KLAUS, xx...
JOHN M. SCANLAN, x...
THOMAS C. ABEL, x...
RAYMOND S. LASHIER, xx...
MARK J. CRAIG, x...
HAGEN W. FRANK, x...
TIMOTHY A. HERNDON, x...
CAROLINE A. SIMKINS, xx...
ROBERT M. MCGUINESS, x...
THOMAS J. KEATING, xx...
JAMES A. EVANS, xx...
DALE R. DAVIS, xx...
ANTHONY R. MCNEILL, x...
KIRK W. HYMES, x...
CRAIG S. MCDONALD, x...
JAMES A. CAMERON, x...
MARK A. MCDONALD, x...
PHILIP D. GENTILE, xx...
MATTHEW E. GREEN, x...
JAMES B. MILLER, xx...
DALE D. BERG, xx...
MARK W. ERB, x...
ROGER D. MITCHELL, x...
WILLIAM N. DICKERSON, x...
STEVEN B. OCKERMAN, x...
DONALD S. SMITH, xx...
JOSEPH R. BERNARD, JR., xx...
WILLIAM J. FLANNERY, xx...
GARY K. WORTHAM, x...
JON L. ROSS, xx...
THOMAS T. BECK, x...
PAUL B. DUNAHOE, xx...
DAVID A. SOBYRA, xx...
ALLAN M. COLLIER, x...
EDWARD A. LOGUE, x...
ROBERT A. DOSS, JR., xx...
JEFFREY A. SMITH, xx...
MICHAEL J. LYNCH, x...
JEFFREY R. WHITE, xx...
IRIC B. BRESSLER, x...
DEAN T. SINIFF, xx...
SAUL HERNANDEZ, xx...
THOMAS A. REABE, xx...
ANDREW F. JENSEN III, xx...
WILLIAM G. WALDRON, x...
JOHN P. MONAHAN, JR., xx...
MARK D. FRANKLIN, xx...
SCOTT C. MYKLEBY, x...
ROY L. TRUJILLO, xx...
ROBERT A. JACOBS, xx...
CHRISTOPHER J. STGEORGE, xx...
FRANCIS J. BLANKEMEYER, JR., xx...
STEVEN R. CUSUMANO, x...
ROBERT S. ABBOTT, xx...
RICHARD M. SELLECK, x...
MICHAEL J. OEHL, x...
DAVID S. GRANTHAM, xx...
DAVID W. SMITH, x...
DANIEL J. KRALL, x...
ROSS A. ADELMAN, xx...
MICHAEL R. MELILLO, x...
FREDERIC J. GREENWOOD, xx...
FRANK FREE III, xx...
MARK E. WAKEMAN, xx...
JOHN D. SIPES, JR., xx...
JEDDY M. RUIZ, xx...
THOMAS INNOCENTI III, xx...
WILLIAM A. CZARNIAWSKI, xx...
JAMES R. EDWARDS, xx...
LEROY L. BLAHNA, xx...
JOHN F. MCELROY, xx...
MICHAEL P. HULL, x...
MARK H. BRYANT, xx...
DAVID M. HAGOPIAN, xx...
PAUL M. GUERRA, xx...
THOMAS J. OLEARY, xx...
ROBERT M. WINT, xx...
JOSEPH R. GOULET, xx...
RICHARD A. SCHOTT, x...
JEFFREY A. SOKOLY, xx...
EDGAR V. HOWELL III, x...
CHRISTOPHER M. CLAYTON, x...
MICHAEL J. RAIMONDO, x...
HENRY B. MATHEWS II, xx...
DARREN L. HARGIS, xx...
LEIGHTON R. QUICK, x...
MARK E. PETERS, xx...
ROBERT D. GATTUSO, xx...
LAWRENCE D. PUTNAM, x...
ANDREW M. HOFLEY II, x...
GARY S. GRAHAM, xx...
WILLIAM P. MCLAUGHLIN, x...
JESSE E. WRICE, JR., xx...
PHILLIP J. SKALNIAK, JR., xx...
LARRY S. STEWART, JR., xx...
KENNETH W. FANCHER, x...
LANCE D. DEFFENBAUGH, xx...
JOHN T. MURRAY, x...
VINCENT M. FIAMMETTA, xx...
BENJAMIN R. BRADEN, xx...
PATRICK S. GOETZ, x...
BRADLEY P. PANGLE, xx...
VINCENT A. COGLIANESE, xx...
MICHAEL D. RESNICK, x...
DAVID A. EZYK, x...
DAVID R. MCKINLEY, x...
MARY L. HOCHSTETLER, x...
GARY S. BARTHEL, xx...

TIMOTHY J. EVANS, xx...
ANDREW C. MACLACHLAN, x...
PATRICK J. UETZ, JR., xx...
MARK J. GRIFFITH, xx...
ROBERT L. SARTOR, xx...
MARK B. KANE, x...
STEVEN M. GROZINSKI, xx...
JOHN J. KENNEY, x...
ROGER L. POLLARD, x...
FRANCIS L. KELLEY, xx...
ENRIQUE E. CRUZ, x...
DWIGHT H. SULLIVAN, x...
DAVID B. HALL, xx...
GREGG W. BRINEGAR, x...
THOMAS N. GOBEN, x...
CHRISTOPHER S. HADINGER, xx...
TONY L. WUNDERLICH, x...
DONALD R. SWINGLER, x...
DANIEL J. MCGEE, xx...
HECTOR J. DUENEZ, xx...
KENNETH M. BROWN, x...
JOHN J. BROADMEADOW, x...
THOMAS A. DRECHSLER, xx...
JOSEPH M. HARRISON, xx...
DAVID R. HARTMAN, x...
DAVID A. GANDY, xx...
JOEL E. PAULSEN, xx...
THOMAS J. NEIS, xx...
JOSE G. CRISTY, II, xx...
DARIN D. JOHNSON, xx...
JON C. CUNNINGHAM, x...
STEVE B. RODRIQUES, x...
ROBERT W. SPRAGUE, JR., x...
RICHARD G. HAMMOND, x...
DAVID A. NELSON, xx...
ROBERT D. ERWIN, x...
ROBERT J. MLNARIK, xx...
STEPHEN J. KELLY, xx...
ROBERT E. DAVIS, xx...
WILLIAM J. WAINWRIGHT, x...
BRUCE A. HAINES, x...
ERIC R. WHITE, x...
FRANK H. SIMONDS, JR., x...
MARK J. CRAVENS, xx...
JOSEPH P. SAMPSON, xx...
STEVEN C. GULOTTA, xx...
PATRICK J. OROURKE, x...
RONALD B. RADICH, x...
CLARENCE E. SEXTON, JR., xx...
MICHAEL E. LOUDY, xx...
MICHAEL E. LOOS, xx...
BEN K. WIGAND, xx...
MICHAEL J. GOLLWITZER, xx...
JOHN J. YUHAS, JR., xx...
LAWRENCE J. PLEIS III, xx...
SCOTT B. JACK, xx...
DALE M. ATKINSON, xx...
BOBBY H. HUNT, xx...
WAYNE S. MANDAK, xx...
MICHAEL R. KING, x...
DAMIEN X. LOTT, xx...
CRAIG D. JENSEN, xx...
FREDERICK M. PADILLA, xx...
JOSEPH D. APODACA, xx...
DONALD J. LILES, xx...
KENT D. MORISON, xx...
LEONARD L. ETCHO, JR., xx...
TERRY M. FLANNERY, xx...
MATTHEW P. BRACKMANN, xx...
RODDY STATEN, xx...
GREGORY M. SATTERFIELD, xx...
ROBERT S. REYBURN, xx...
DAVID A. RABABY, x...
JACK CEISLA, xx...
MARK L. WARD, xx...
SAMUEL O. LEWIS, JR., xx...
ROBERT D. DEFORGE, xx...
SHAWN P. TATUM, xx...
CULLEN L. DAVIDSON III, xx...
CRAIG S. EDMONDS, xx...
MICHAEL F. BELCHER, xx...
DAVID G. GRAN, xx...
JOHN D. QUIGLEY, JR., xx...
DENNIS M. GREENE, x...
CECIL R. BEAIRD, JR., xx...
CARL E. MUNDY III, xx...
WILLIAM R. FEARN IV, xx...
RICHARD M. LATTIMER, JR., xx...
RICHARD T. STAPLES, xx...
DANIEL W. MCGUIRE, xx...
JEFFREY S. SPEIGHTS, xx...
RAYMOND F. LHEUREUX, xx...
DAVID L. NICHOLSON, xx...
CHRISTOPHER F. AJINGA, xx...
MARK D. VANKAN, xx...
FRANZ J. GAYL, xx...
PHILLIP R. SHORT, xx...
PAUL K. AUGUSTINE, x...
THOMAS W. WHIELDON JR., xx...
KATHLEEN M. MURNEY, xx...
MARK P. EVERMAN, xx...
FLOYD J. USRY JR., xx...
MICHAEL C. JORDAN, xx...
TIMOTHY J. OTT, xx...
ROBERT R. DANKO, xx...
RICHARD B. PREBLE, xx...
LANCE M. BRYANT, xx...
JAMES B. SWEENY III, xx...
MICHAEL S. CAMSTRA, xx...
CARY D. VENDEN, xx...
ROBIN G. GENTRY, xx...
WILLIAM D. REAVIS, xx...

ELLEN M. JAKOVICH, xx...
WAYNE J. HALLEM, xx...
DUANE B. PERRY, xx...
WILLIAM D. KIDWELL, xx...
JEFFERY L. EMERY, xx...
MICHAEL S. MCGUIRE, xx...
ROBERT E. PAIR JR., xx...
CYNTHIA J. VALENTIN, xx...
JOHN L. MAYER, xx...
TODD R. FEY, xx...
FRED J. MCGUIRE, xx...
PETER M. RAMEY, xx...
STEVE RALPH, xx...
CHARLES R. SONTAG, xx...
TRACY R. HAGUE, xx...
JON K. ALDRIDGE, xx...
ROBERT L. KILROY, xx...
ROBERT F. CASTELLVI, xx...

IN THE NAVY

THE FOLLOWING-NAMED COMMANDERS IN THE LINE OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF CAPTAIN, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

UNRESTRICTED LINE OFFICERS

To be captain

RONALD LEE ALSBROOKS
CHRISTOPHER CONLAN AMES
THOMAS JAY ANDERSON
DAVID JOSEPH ANTANITUS
DAVID PAUL AUSTIN
MICHAEL GEORGE BAMFORD
JOSEPH EUGENE BELINSKI
STEPHEN ERIC BENSON
JOHN ANDREW BORCHARDT
ROBERT LEE BRANDHUBER
RICHARD ERAL BROOKS
ANNETTE ELISE BROWN
CHALKER WHITNER BROWN III
THOMAS JOSEPH BROWN, JR.
DAVID ROSS BRYANT
JANSEN WOOLDRIDGE BUCKNER
STEPHEN JOHN BURICH III
STEVEN JOHN BUSCH
WILLARD CLINTON BUTLER, JR.
LARRIE GENE CABLE
MICHAEL ALAN CALHOUN
JAMES BYRON CAPBELL
JAMES RANDALL CANNON
JOSEPH J. CAPALBO
LELIA VITTETOW CARNEVALE
WILLIAM FREDERICK J. CARICO
THEODORE MONTAGUE CARSON, JR.
GARY THOMAS CARTER
BRUCE WESLEY CAVEY
GARY MICHAEL CERNEY
RONALD LEE CHAPMAN
LOUIS DEAK CHILDRESS
KENNETH ELBERT CLEMENTS
THOMAS KEITH COLE
BARRY MICHAEL COSTELLO
JOHN JOSEPH COYNE
WILLIAM DOUGLAS CROWDER
KATHLEEN MARIE CUMMINGS
HUGH CUNNINGHAM DAWSON
PAUL THOMAS DEBIEN
JOHN MICHAEL DENKLER
JAMES FRANK DEPPE
THOMAS MELVIN DEYKE
GREGORY ALLEN DIFFERDING
THOMAS EDWARD DIGAN
THOMAS CLIFFORD DION
RAYMOND PATRICK DONAHUE, JR.
KIRKLAND HOGUE DONALD
STEPHEN DOUGLAS DOYLE
ROBERT PATRICK DUNN
DOUGLAS KENT DUPOUY
WILLIAM FULLERTON ECKERT, JR.
ALLEN ARVO EFRAIMSON
WILLIAM EDWARD ELLIOTT, JR.
STEVEN MARK ENDACOTT
LEO FRANCIS ENWRIGHT, JR.
VICTOR RAYMOND FIEBIG
JOHN EUGENE FINK
STEVEN FRANKLIN FIRKS
THOMAS RICHARD FORD
JOHN BERNARD FRANK, JR.
WAYNE KENNETH FREY
JAMES THOMAS FRY
MARCHIA LIMPER FULHAM
KATHY ANN GALINGER
ARTHUR WAYNE GALLO
JAN CODY GAUDIO
JUDY HEIMAN GAZE
JOSEPH JAMES GEORGE, JR.
STEPHEN DOUGLAS GILMORE
TRACEE DEBORAH GLASS
JAMES BASIL GODWIN III
GARY JAMES GRAUPMANN
DAVID HERBERT GRUNDIES
ROBERT CLETUS HAAS
THOMAS LEE HAGEN
CHARLES SAMUEL HAMILTON II
ANDREW TRAVIS HAMMOND
ALAN MELVIN HARMS
WARD LEE HARRIS, JR.
HERBERT RALPH HAUSE
PAUL THOMAS HAUSER
LAWRENCE WILLIAM HAYNER
CLARENCE DONALD HAYS, JR.
CHESTER ETHANE HELMS
HARRIET DENISE HENDERSON
RANDALL HAMES HESS
JOHN JOSEPH HIGBEE
STEPHEN JONATHAN HIMES
SHARON LEE HODGE
JUDITH ANN HOLDEN
STANLEY JAMES HOLLOWAY
VERNON CHARLES HUBER
DENIS EMIL HUELLE
ELLEN JEAN HURLEY
PAUL JOSEPH JACKSON
KOLIN MARC JAN
STEPHEN CHARLES JASPER
ROBERT DONALD JENKINS III
CARLTON BOYD JEWETT
STEVEN KENNETH JOHNSON
ROBERT EDUARD JOHNSTON
CHARLIE ANTHONY JONES, JR.
HOUSTON KEITH JONES
ROBERT BINGHAM JONES
BRADLEY JAY KAPLAN
ROBERT FUREY KERNAN
RONALD EDWARD KEYS
MARK DOUGLAS KIKTA
MICHAEL ROGERS KING
GARY ANTHONY KOHLER
JOSEPH KRENZEL
STEVEN CHARLES KUKRAL
ROBERT ALAN KUSUDA
MICHAEL JOHN LANDERS
THOMAS PATRICK LANE
JOHN JEFFREY LANGER
CONRAD AARON LANGLEY, JR.
KEVIN BERNARD LEAHY
JOHN RICHARD LEENHOUTS
WALTER FRANK LEOFFLER, JR.
RICHARD CROAKE LEWIS III
KENNETH MICHAEL LINN
ROBERT DOUGLAS LITTLEFIELD
RODNEY MARVIN LOCKE
SAMUEL JONES LOCKLEAR III
GAVIN DOUGLAS LOWDER
JOSEPH MAGUIRE
JAMES ANTHONY MALLORY
CHRISTOPHER BRUCE MARTIN
JENNY LOU MARTINEZ
PETER ANTHONY MASCIANGELO
WILLIAM ROBERT MASON
ROBERT CLYDE MASSEY
MICHAEL LEE MAURER
PERRY DAVID MAXWELL
RICHARD KAY MAYNE
ROBERT EMMETT MCCABE III
HOWARD OWENS MCDANIEL
PATRICIA ANN MCFADDEN
WILLIAM LEE MCKEE
GEORGE FRANKLIN MCKNIGHT
CHARLTON J. MCNESS
JOHN CARL MEYER
TIMOTHY ALBERT MEYERS
JOACHIM THOMAS MIHALICK
CHARLES ANTHONY MILETICH
JAMES JOHN MILLER
MICHAEL HAROLD MILLER
CHRISTOPHER MICHAEL MOE
ROBERT THOMAS MOELLER
MATTHEW GORDON MOFFIT
WILLIAM DENNIS MOLLOY, JR.
JAMES KEVIN MORAN
MARY PIERCE MOSIER
DONALD DANIEL MOSSER
PAMELA MICHELE MULVEHILL
LARRY JOHN MUNNS
WILLIAM EUGENE MUNSEE
WILLIAM FRANCIS MURPHY III
JAMES KEITH NANCE
CHARLES THEODORE NASH
KEITH CARLTON NAUMANN
CHARLES WILLIAM NESBY
PAUL EMILE NORMAND
JEFFREY MICHAEL OBRIEN
JOHN EDWARD ODEGAARD
CRAIG WENDAL PATTEN
CARMINE LINCOLN PETRICCIONE
JOHN EDWARD PIC, JR.
CARL ROBERT PIERSON
GLENN JAMES PITTMAN
RUSSELL FREDERICK PLAPPERT
PHILLIP MARK POLEFRONE
JAMES ROSWELL POPLAR III
JACK DUANE PUNCHES, JR.
LEO JOSEPH QUILICI II
BRIAN JOHN RABE
ANN ELISABETH RONDEAU
NEIL EUGENE RONDORF
BRUCE FREDERICK RUSSELL
HENRY JAMES SANFORD
LESLIE JACOB SCHAFFNER, JR.
BRIAN GERALD SCHIRES
LARRY HERMAN SCHMIDT
JACOB LAWRENCE SHUFORD
DANIEL CHARLES SIMONDS
RICHARD WESLEY SLUYS
CARL MELVIN SMEIGH, JR.
SHAWN MATTHEW SMITH
VINSON ELMER SMITH
STEPHEN MICHAEL SOULES
MARC THOMAS STANLEY
TIMOTHY BENTON STARK
WILLIAM CARRINGT STETTINIUS
JOHN THMAS STING
HUGH GOODMAN STORY, JR.
PAUL CHRISTIAN STRIFFLER
JOHN DICKSON STUFFLEBEEM
ROBERT ELMER STUMPF
CLAUDE DEAN SWAIM
FRANK SWEIGART
ROBERT JOSEPH TAYLOR
THOMAS WILLIAM THIESSE
WAYNE ALLEN THORNTON
TERRY LEE TIPPIN
DONALD JAMES TOMASOSKI
HARTWELL THOMAS TROTTER, JR.
PATRICK JOSEPH TWOMEY
DOUGLAS ALLEN UNDESSER
RAYMOND JAMES VALENCIA
CRAIG EUGENE VANCE
SCOTT WALLACE VANCE
THOMAS NEAL VAUGHN
ROBERT DALE VINT
EDWARD CARSON WALLER
WILLIAM ALOYSIUS WALSH
MICHAEL JOHN WINSLOW
ALLEN BLAINE WORLEY
JOHN WILLIAM YAEGER
RAYMOND RITCH YEATS
HARRY EMANUEL YEISER III
RAND GORDON YERIGAN
ROBERT ERNEST YOUNG
GRANT GORDON ZIEBELL
DAVID ALEXANDER ZUSI

ENGINEERING DUTY OFFICERS

To be captain

CLIFFORD GERALD BARNES JR.
CHARLES WESLEY J. CHESTERMAN
ANTHONY JAMES CHRISTIAN
JAMES FORDHAM DEUCHER
DAVIS RUDOLPH GAMBLE JR.
GARY EDWARD GROH
THOMAS ALAN GROTE
DAVID SAMUEL HERBEIN
ROBERT JAMES HOGAN II
EDWARD BENJAMIN MORGAN
KEVIN GEORGE OBRIEN
THOMAS FRANCIS OLSON
RONALD LEON POLKOWSKY
DOUGLAS HARRIS RAU
DANA WELLS ROWLAND
LLOYD MERRIL SAWYER JR.
PAUL EDWARD SULLIVAN
DAVID JOE VOGEL

AEROSPACE ENGINEERING DUTY OFFICERS (ENGINEERING)

To be captain

JOHN ROBERT BRAMER
FARRELL WAYNE CORLEY
MICHAEL JOHN DOUGHERTY
ROBERT JACK HEIFNER
ROY LESTER HIXSON III
CHARLES HERBERT JOHNSTON JR.
LARRY VERNON JUDGE
JOHN FRANCIS KINZER
MARTIN STANLEY KOSIEK
WINSTON ELLIOTT SCOTT
MICHAEL JAMES WITTE

AEROSPACE ENGINEERING DUTY OFFICERS (MAINTENANCE)

To be captain

JERRY FLOYD DERRICK
DENNIS HARRY GENOVESE
MARGUERITE ELIZABETH MCNIEL
RONALD EARL WAGNER

SPECIAL DUTY OFFICERS (CRYPTOLOGY)

To be captain

JUDITH ANNE GALLINA
WILLIAM GRAVELL
EDWARD DAVID HEUER
REED WILLIS JEROME
JEROME P. REPAN

SPECIAL DUTY OFFICERS (INTELLIGENCE)

To be captain

ROBERT LEO BANFORD
ARMAND LOUIS BAPTISTA JR.
CHARLES C. COOK III
DENNIS NED DUBOIS
JAMES RUSSELL FITZSIMONDS
GAIL HARRIS
STEPHEN CHARLES JAYJOCK
DAVID ALAN JOHNSON
WALTER REECE JOHNSON JR.
ARTHUR JONES III
DAVID JOSEPH MARESH
STEVEN DONALD MONSON
FREDRICK ROCKER
RICHARD MILOS RUZICKA
THOMAS NEWTON SAMPSON II
CARL OTIS SCHUSTER
JOSEPH DAVID STEWART

SPECIAL DUTY OFFICERS (PUBLIC AFFAIRS)

To be captain

GEORGE WILLIAM FARRAR
CRAIG ROBERT QUIGLEY

SPECIAL DUTY OFFICER (OCEANOGRAPHY)

To be captain

CYNTHIA PAUL DILLON
MICHAEL RICHARD HACUNDA
BERNARDINO JOSE JARAMILLO
DENNIS GLENN LARSEN
LARRY LEE WARRENFELTZ

LIMITED DUTY OFFICERS (LINE)

To be captain

IVON G. BOYCOURT JR.
GEOFFREY J. CALABRESE
RAYMOND BERNARD FONE
SIDNEY B. FREEGARD JR.
PATRICK K. JUSTET
WILLIAM J. STEWART